



MEMORANDUM

RCA
Agenda Item No. 3 (E)

TO: Honorable Chairperson Barbara Carey-Shuler, Ed. D
and Members, Board of County Commissioners

DATE: May 19, 2004

FROM: George M. Burgess

County Manager

SUBJECT: Request to Advertise for a RFP for
Operations and Maintenance of Concession
Facilities & Retail Sales at Miami Metrozoo
RFP No. 384

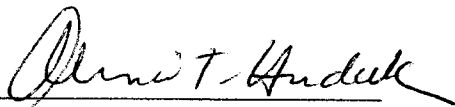
It is recommended that the Board authorize the advertisement of a Request for Proposals (RFP) for the Operations and Maintenance of Concession Facilities & Retail Sales at Miami Metrozoo, attached in substantially completed form and prepared by the Department of Procurement Management for the Miami-Dade Park and Recreation Department.

RFP TITLE:	Operation and Maintenance of Concession Facilities & Retail Sales at Miami Metrozoo
RFP NO.:	384
DESCRIPTION:	This RFP is recommended to be issued to obtain proposals from qualified firms to provide concession services and retail sales at Miami Metrozoo in a manner that provides a high level of service and quality to park patrons. Concession services and retail sales must be provided on a set schedule during the regularly scheduled operating hours of Metrozoo.
FUNDING SOURCE:	Revenue producing
REVENUE ESTIMATE:	\$ 350,000 annually
TERM:	Five years with two two-year options to renew exercised at the sole discretion of the County.
USING/MANAGING AGENCY:	Miami-Dade Park and Recreation Department
REVIEW COMMITTEE:	Pursuant to Administrative Orders 3-3, 3-17 and 3-18, contract measures do not apply to revenue producing contracts.
EST. ADVERTISEMENT DATE:	Ten days after adoption by the Board of County Commissioners, unless vetoed by the Mayor

Honorable Chairperson Barbara Carey-Shuler, Ed. D
and Members, Board of County Commissioners
Page 2

The Gift and Novelties Concession contract is currently held by the Zoological Society of South Florida (the Society) through November 18, 2006. Should a determination be made that a new concessionaire be contracted for the Gift and Novelty Concession services, the Society would need to concur with the decision and relinquish its rights to the existing agreement through concurrent action approved by the Society Board and the Board of County Commissioners. The County expressly retains the right to reject all proposals submitted in response to this Request for Proposals in the event these issues cannot be resolved.

Attachments

A handwritten signature in black ink, appearing to read "Alvin T. Hudek", is written over a horizontal line.

Assistant County Manager



MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: May 11, 2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(O)(1)(G)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(O)(1)(G)
5-11-04

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY
MANAGER TO ADVERTISE A REQUEST FOR
PROPOSALS FOR AND ON BEHALF OF MIAMI-DADE
COUNTY TO OBTAIN OPERATIONS AND
MAINTENANCE OF CONCESSION FACILITIES &
RETAIL SALES AT MIAMI METROZOO, TO EXERCISE
ANY CANCELLATION AND RE-ADVERTISEMENT
PROVISIONS AND TO EXERCISE ALL OTHER RIGHTS
CONTAINED THEREIN
RFP NO. 384

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the advertisement of Request for Proposals No.384, Operations and Maintenance of Concession Facilities & Retail Sales at Miami Metrozoo, in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to advertise same for and on behalf of Miami-Dade County and to exercise any cancellation and re-advertisement provisions and any other rights contained therein.

The foregoing resolution was offered by Commissioner _____, who
moved its adoption. The motion was seconded by Commissioner _____ and upon
being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson	
Katy Sorenson, Vice-Chairperson	
Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorrian D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 11th day of May, 2004. This Resolution and contract, if not vetoed, shall become effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Mariela Martinez-Cid

**REQUEST FOR PROPOSALS
FOR
OPERATION AND MAINTENANCE
OF CONCESSION FACILITIES & RETAIL SALES AT METROZOO**

RFP No. 384

PRE-PROPOSAL CONFERENCE TO BE HELD ON
June 10, 2004 at 10:00 AM (Local Time)

at
Miami Metrozoo
12400 SW 152 Street
Miami, Florida 33177

ISSUING DEPARTMENT:
DEPARTMENT OF PROCUREMENT MANAGEMENT
for
Department of Park and Recreation

Contracting Officer: J.C. Romano
Telephone: (305) 375-4262

PROPOSALS ARE DUE AT THE ADDRESS SHOWN BELOW
NO LATER THAN

Friday, July 2, 2004 at 2:00 PM (Local Time)
at

CLERK OF THE BOARD
STEPHEN P. CLARK CENTER
111 NW 1st STREET, 17TH FLOOR, SUITE 202
MIAMI, FLORIDA 33128-1983

PROPOSALS WILL BE OPENED PROMPTLY AT THE TIME AND PLACE SPECIFIED. PROPOSALS RECEIVED AFTER THE FIRST PROPOSAL HAS BEEN OPENED WILL NOT BE OPENED AND WILL NOT BE CONSIDERED. THE RESPONSIBILITY FOR SUBMITTING A PROPOSAL TO THE CLERK OF THE BOARD ON OR BEFORE THE STATED TIME AND DATE IS SOLELY AND STRICTLY THE RESPONSIBILITY OF THE PROPOSER. MIAMI-DADE COUNTY IS NOT RESPONSIBLE FOR DELAYS CAUSED BY ANY MAIL, PACKAGE OR COURIER SERVICE, INCLUDING THE U.S. MAIL, OR CAUSED BY ANY OTHER OCCURRENCE.

MIAMI-DADE COUNTY IS AN EQUAL OPPORTUNITY EMPLOYER AND DOES NOT
DISCRIMINATE BASED ON AGE, GENDER, RACE OR DISABILITY.

VISIT THE COUNTY DEPARTMENT OF PROCUREMENT MANAGEMENT
WEBSITE: <http://www.miamidade.gov/dpm>

REV. 7/22/03

TABLE OF CONTENTS

Section	
1.0	Overview and Proposal Procedures
2.0	Scope of Services
3.0	Proposal Format
4.0	Evaluation/Selection Process
5.0	Form of Agreement
6.0	Attachments
	Form A-1 Cover Page for Technical Proposal
	Form A-2 Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentation
	Form A-3 Acknowledgment of Addenda
	Form A-4 Disability Non-Discrimination Affidavit
	Form A-5 Local Preference Information
	Form A-7.1 Proposer's Disclosure of Subcontractors and Suppliers
	Form A-7.2 Proposer's Disclosure of Fair Subcontracting Policies
	Form A-8.1 Affirmative Action Plan Exemption Affidavit
	Form A-8.2 Affirmative Action Plan/Procurement Policy Affidavit
	Form A-10 Miami-Dade County Collection of Taxes, Fees and Parking Tickets Proposers not in Arrears Affidavit
	Form A-12 Code of Business Ethics
	Form A-13 Domestic Violence Leave Affidavit
	Form B-1 Price Proposal Schedule (to be submitted separately from the Technical Proposal)

DEFINITIONS

The following words and expressions used in this solicitation shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contractor" or "Consultant" to mean the Proposer that receives any award of a Contract from the County as a result of this Solicitation, which is also to be known as "the prime Contractor" or "the prime Consultant".
- b) The word "County" to mean Miami-Dade County, a political subdivision of the State of Florida.
- c) The word "Department" to mean Department of Parks and Recreation.
- d) The words "Proposer", "Submitter" or "Respondent" to mean the person, firm, entity or organization submitting a response to this Solicitation.
- e) The words "Scope of Services" or "Scope of Work" to mean Section 2.0 of this Solicitation, which details the work to be performed by the Contractor or Consultant.
- f) The word "Solicitation" to mean this Request For Proposal (RFP) or Request For Qualification (RFQ) or Request For Information (RFI) document, and all associated addenda and attachments.
- g) The words "Subcontractor" or "Subconsultant" to mean any person, firm, entity or organization, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, or labor and materials, in connection with the Work or Services to the County, whether directly or indirectly, on behalf of the Contractor.
- h) The words "Work", "Services", "Program", "Project" or "Engagement" to mean all matters and things that will be required to be done by the Contractor in accordance with the Scope of Services and the terms and conditions of this Solicitation.
- i) The words "Work Order" to mean a document that defines and describes the parameters of individual projects assigned or awarded by the County to the Contractor in accordance to the terms of the Contract.

SECTION 1.0 - RFP OVERVIEW AND PROPOSAL PROCEDURES

1.1 INTRODUCTION/BACKGROUND

The Miami-Dade County Park and Recreation Department is seeking qualified firms interested in operating Miami Metrozoo's food service and retail sales facilities. Proposers must demonstrate experience in the provision of concession services facilities plus any other related activities including knowledge of the legal requirements that are involved in this type of operation. Proposers must also provide evidence of adequate financial strength to provide all equipment, operations and reasonable working capital, as well as a minimum of five (5) years experience in providing retail food concessions in large attractions, entertainment or recreational settings. Proposer will be required to provide all furnishings, fixtures, and equipment necessary for this operation.

Parks and Recreation is also seeking proposals for the Operations of Retail Sales. Proposer's may submit proposals for Retail Sales operations services as identified in Section 2.0 of this RFP document. The County has sole discretion of accepting proposals for Retail Services Operations.

The selected Proposer shall provide concession services and retail sales in a manner that provides a high level of service and quality to park patrons under a five year contract with two, two year renewals available. At a minimum, concession services and retail sales must be provided on a set schedule, during the regularly scheduled operating hours of Metrozoo, subject to approval by the Department of Parks and Recreation.

MASTER PLAN

A new master plan for Metrozoo was approved July 2002. The plan calls for eight (8) distinct zoogeographical regions from around the world. Within these regions, themed villages will provide shelter, refreshments, educational opportunities, and a variety of visitor experiences. The master plan will be completed over a 20-year phasing process and expected to cost approximately \$350 million.

Phase I was completed in May 2003, with the opening of the \$14 million American Bankers Family Aviary *Wings of Asia* exhibit. A \$35 million Tropical Americas exhibit is currently in design with an expected opening in early 2007.

The Zoo's annual attendance baseline of 485,000 visitors (2003) is projected to increase by an average of 5% annually over the next five years as the Zoo's master plan and capital improvements are implemented.

Additionally, the County anticipates issuing the following three RFP's within the next five years:

1. Development & Operation of a Water Theme Park located on Metrozoo property.
2. Development & Operation of a high end wild animal theme restaurant to be operated during and after Metrozoo business hours.
3. Development & Operation of a Family Fun Center located on Metrozoo property.

1.2 RFP TIMETABLE

The anticipated schedule for this RFP and contract approval is as follows:

RFP available for distribution: May 21, 2004

Pre-Proposal Conference: June 10, 2004
Location: Miami Metrozoo

Deadline for receipt of questions: June 18, 2004

Deadline for receipt of proposals: Friday, July 2, 2004 at 2:00 p.m. (Local Time)
(See Section 1.4 for location)

Evaluation/Selection process: Week of July 12, 2004

Oral presentations, if conducted: Week of July 26, 2004

Projected Award Date: September 6, 2004

Projected contract start date: October 1, 2004

1.3 RFP AVAILABILITY

The solicitation package is available at no cost on-line at www.miamidade.gov/dpm or through Department of Procurement Management - Vendor Information Center (VIC), 111 NW 1st Street, Suite 112, Miami, FL 33128-1919 at a cost of \$10.00 for each solicitation package and an additional \$5.00 fee for a request to receive the solicitation package through the United States Postal Service. For your convenience we now accept VISA and MasterCard. To request the solicitation package through the United States Postal Service, mail your request with the following information: the solicitation number and title, the name of Proposer's contact person, Proposer's name, complete address to be mailed to, telephone number and fax number, along with a \$15.00 check or money order made payable to: Miami-Dade Board of County Commissioners.

Proposers or Respondents who obtain copies of this Solicitation from sources other than the County's Department of Procurement Management website or VIC risk the potential of not receiving addenda, since their names will not be included on the list of firms participating in the process for this particular Solicitation. Such Proposers or Respondents are solely responsible for those risks (**see Section 1.8**).

1.4 PROPOSAL SUBMISSION

All proposals must be submitted on 8 1/2" X 11" paper, neatly typed on one side only, with normal margins, and spacing. The original document package must not be bound and the document package copies should be individually bound. **An unbound one-sided original and 10 bound copies (a total of 11) of the complete proposal (both the technical and price proposals) must be received by the deadline for receipt of proposal specified in this RFP Timetable (see Section 1.2).** The original, all copies, and the separate sealed price/cost envelope, must be submitted (**technical packaged separately from price**) in a sealed envelope or container stating on the outside the Proposer's name, address, telephone number, the RFP number, RFP title, and Proposal Due Date to:

Clerk of the Board
Stephen P. Clark Center
111 NW 1st Street, 17th Floor, Suite 202
Miami, FL 33128-1983

Hand-carried proposals may be delivered to the above address **ONLY** between the hours of 8:00 a.m. and 4:30 p.m., Mondays through Fridays (however, please note that proposals are due at the Clerk of the Board on the date and at the time indicated in Section 1.2. Additionally, the Clerk of the Board is closed on holidays observed by the County). Proposers are responsible for informing any commercial delivery service, if used, of all delivery requirements and for ensuring that the required address information appears on the outer wrapper or envelope used by such service.

Both the Technical (Quality) Proposal and the Price Proposal must be signed by an authorized officer of the Proposer who is legally authorized to enter into a contractual relationship in the name of the Proposer. The submittal of a proposal by a Proposer will be considered by the County as constituting an offer by the Proposer to perform the required services at the stated prices.

1.5 PRE-PROPOSAL CONFERENCE/EXAMINATION OF SITE

A pre-proposal conference has been scheduled for **the date, time and place specified in this RFP Timetable (see Section 1.2)**. Attendance is recommended but not mandatory. Proposers are requested to inform the RFP Contracting Officer of the number of persons expected to attend no later than 24 hours before the scheduled date. Proposers are encouraged to submit any questions in writing to the RFP Contracting Officer (**see Section 1.6**) in advance of the pre-proposal conference.

1.6 CONE OF SILENCE

Pursuant to Section 2-11.1(t) of the Miami-Dade County Code, as amended, a "Cone of Silence" is imposed upon each RFP or RFQ after advertisement and terminates at the time the County Manager issues a written recommendation to the Board of County Commissioners. The Cone of Silence **prohibits any communication** regarding RFPs or RFQs between, among others:

- potential Proposers, service providers, lobbyists or consultants **and** the County's professional staff including, but not limited to, the County Manager and the County Manager's staff, the Mayor, County Commissioners or their respective staffs;
- the Mayor, County Commissioners or their respective staffs **and** the County's professional staff including, but not limited to, the County Manager and the County Manager's staff; or
- potential Proposers, service providers, lobbyists or consultants, any member of the County's professional staff, the Mayor, County Commissioners or their respective staffs **and** any member of the respective selection committee.

The provisions do not apply to, among other communications:

- oral communications with the staff of the Vendor Information Center, the responsible Procurement Agent or Contracting Officer, provided the communication is limited strictly to matters of process or procedure already contained in the solicitation document;
- oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting; or
- communications in writing at any time with any county employees, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP or RFQ documents.

Proposers must file a copy of any written communications with the Clerk of the Board, which shall be made available to any person upon request. The County shall respond in writing and file a copy with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be in the form of e-mail, with a copy to the Clerk of the Board at CLERKBCC@MIAMIDADE.GOV.

In addition to any other penalties provided by law, violation of the Cone of Silence by any Proposer shall

render any RFP award or RFQ award voidable. Any person having personal knowledge of a violation of these provisions shall report such violation to the State Attorney and/or may file a complaint with Ethics Commission. Proposers should reference Section 2-11.1(t) of the Miami-Dade County Code for further clarification.

This language is only a summary of the key provisions of the Cone of Silence. Please review Miami-Dade County Administrative Order 3-27 for a complete and thorough description of the Cone of Silence.

All Proposers will be notified in writing when the County Manager makes an award recommendation to the Board of County Commissioners.

The Contracting Officer for this RFP is:

Name and Title: J.C. Romano, Procurement Contracting Officer
Name of Agency: Department of Procurement Management
Address: 111 NW 1st Street, Miami, Florida 33128
Telephone: (305) 375-4262
Fax: (305) 375-1083
Email: jromano@miamidade.gov

1.7 CONTRACT MEASURES

Not Applicable.

1.8 ADDITIONAL INFORMATION/ADDENDA

Requests for additional information or clarifications must be made in writing and received by the County's Contracting Officer for this RFP, in accordance with **Section 1.6** above, no later than the deadline for receipt of questions specified in the RFP Timetable (**see Section 1.2**). The request must contain the RFP number and title, Proposer's name, name of Proposer's contact person, address, phone number, and facsimile number.

Electronic facsimile requesting additional information will be received by the RFP Contracting Officer at the fax number specified in **Section 1.6** above. Facsimiles must have a cover sheet which includes, at a minimum, the Proposer's name, name of Proposer's contact person, address, number of pages transmitted, phone number, facsimile number, and RFP number and title.

The County will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Proposal Due Date. Proposers should not rely on any representations, statements or explanations other than those made in this RFP or in any written addendum to this RFP. Where there appears to be conflict between the RFP and any addenda issued, the last addendum issued shall prevail.

It is the Proposer's responsibility to assure receipt of all addenda. The Proposer should verify with the designated RFP Contracting Officer prior to submitting a proposal that all addenda have been received. Proposers are required to acknowledge the number of addenda received as part of their proposals (**see attached Form A-3**).

Proposers who obtain copies of this RFP from sources other than the County's Department of Procurement Management's VIC risk the potential of not receiving addenda, since their names will not be included on the Vendor List for this particular RFP. Such Proposers are solely responsible for those risks.

1.9 PROPOSAL GUARANTEE DEPOSIT

No Proposal Guarantee Deposit is required for this RFP.

1.10 MODIFIED PROPOSALS

A Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the Proposal Due Date. The Evaluation/Selection Committee will only consider the latest version of the proposal.

1.11 WITHDRAWAL OF PROPOSALS

Proposals shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only, addressed to the County contact person for this RFP (in accordance with **Section 1.6**), prior to the Proposal Due Date or upon the expiration of ONE HUNDRED EIGHTY (180) calendar days after the opening of proposals.

1.12 LATE PROPOSALS, LATE MODIFICATIONS AND LATE WITHDRAWALS

Proposals received after the Proposal Due Date are late and will not be considered. Modifications received after the Proposal Due Date are also late and will not be considered. Letters of withdrawal received either after the Proposal Due Date or after contract award, whichever is applicable, are late and will not be considered.

Proposals will be opened promptly at the time and place specified. Proposals received after the first proposal has been opened will not be opened and will not be considered. The responsibility for submitting a proposal to the Clerk of the Board on or before the stated time and date is solely and strictly the responsibility of the Proposer. Miami-Dade County is not responsible for delays caused by any mail, package or couriers service, including the U.S. mail, or caused by any other occurrence.

1.13 RFP POSTPONEMENT/CANCELLATION

The County may, at its sole and absolute discretion, reject any and all, or parts of any and all proposals; re-advertise this RFP; postpone or cancel, at any time, this RFP process; or waive any irregularities in this RFP or in the proposals received as a result of this RFP.

1.14 COSTS INCURRED BY PROPOSERS

All expenses involved with the preparation and submission of proposals to the County, or any work performed in connection therewith, shall be borne by the Proposer(s). No payment will be made for any responses received, nor for any other effort required of or made by the Proposer(s) prior to commencement of work as defined by a contract approved by the Board of County Commissioners.

1.15 BUSINESS ENTITY REGISTRATION

Miami-Dade County requires business entities to complete a registration application with Department of Procurement Management before doing business with the County. Proposers need not register with the County to present a proposal; however, the selected Proposer(s) must register prior to award of a contract as failure to register may result in the rejection of the Proposal. To register, or for assistance in registering, contact the **VIC at (305) 375-5773**.

It is the responsibility of the business entity to update and renew its application concerning any changes such as new address, telephone number, commodities, etc. during the performance of any agreement obtained as a result of this RFP.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or

transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hot line at 305 579-2593.

1.16 ORAL PRESENTATIONS

The County may require Proposers to give oral presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein. If required, the presentations are anticipated to be conducted on the date indicated in this **RFP Timetable (see Section 1.2)**.

1.17 PROPOSER REGISTRATION AFFIDAVIT

Proposers are advised that in accordance with Section 2-11.1(s) of the Code of Miami-Dade County, the attached Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentation (**see attached Form A-2**) must be completed, notarized and included with the proposal submission. Lobbyists specifically include the principal, as well as any agent, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, officer or employee.

Individuals substituted for or added to the presentation team after submittal of the proposal and filing by staff, **MUST** register with the Clerk of the Board and pay all applicable fees.

NOTE: Other than for the Oral Presentation, Proposers who wish to address the County Commission, County Board or Committee concerning any actions, decisions or recommendations of County personnel regarding this RFP in accordance with Section 2-11.1(s) of The Code of Miami-Dade County, Florida and Ordinance 01-162 must register with the Clerk of the Board (Form BCCFORM2DOC) and pay all applicable fees.

1.18 EXCEPTION TO THE RFP

Proposers may take exceptions to any of the terms of this RFP unless the RFP specifically states where exceptions may not be taken. All exceptions taken must be specific, and the Proposer must indicate clearly what alternative is being offered to allow the County a meaningful opportunity to evaluate and rank proposals, and the cost implications of the exception (if any).

Where exceptions are taken, the County shall determine the acceptability of the proposed exceptions. The County, after completing evaluations, may accept or reject the exceptions. Where exceptions are rejected, the County may insist that the Proposer furnish the services or goods described herein or negotiate an acceptable alternative.

All exceptions shall be referenced by utilizing the corresponding Section, paragraph and page number in this RFP. However, the County is under no obligation to accept any exceptions. If no exception is stated, the County will assume that the Proposer will accept all terms and conditions.

1.19 PROPRIETARY/ CONFIDENTIAL INFORMATION

Proposers are hereby notified that all information submitted as part of, or in support of, proposals will be available for public inspection after opening of proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law."

The Proposer shall not submit any information in response to this solicitation, which the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the County in connection with this solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the County in violation of this restriction, either inadvertently or

intentionally, and clearly identifies that information in the proposal as protected or confidential, the County shall endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the proposal. The redaction or return of information pursuant to this clause may render a proposal non responsive.

1.20 NEGOTIATIONS

The County may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint.

The County reserves the right to enter into contract negotiations with the selected Proposer. If the County and the selected Proposer cannot negotiate a successful contract, the County may terminate said negotiations and begin negotiations with another selected Proposer. This process will continue until a contract acceptable to the County has been executed or all proposals are rejected. No Proposer shall have any rights against the County arising from such negotiations or termination thereof.

1.21 RIGHTS OF PROTEST

A recommendation for contract award or rejection of all proposals may be protested by a Proposer in accordance with the procedures contained in Sections 2-8.3 and 2-8.4 of the County Code, as amended, and as established in Administrative Order No. 3-21.

As a condition of initiating any protest, the protester shall present to the Clerk of the Board a non-refundable filing fee payable to the Clerk of the Board in accordance with the schedule provided below.

<u>Award Amount</u>	<u>Filing Fee</u>
\$25,001- \$100,000	\$500
\$100,001- \$500,000	\$1,000
\$500,001- \$5 million	\$3,000
over \$5 million	\$5,000

Any question, issue, objection or disagreement concerning, generated by, or arising from the published requirements, terms, conditions or processes contained or described in the solicitation document shall be deemed waived by the protester and shall be rejected as a basis for a protest unless it was brought by that Proposer to the attention, in writing, of the procurement agent, buyer, contracting officer or other contact person in the County department that issued the solicitation document, at least two working days (not less than 48 hours) prior to the hour of the due date for proposal submission.

The foregoing notwithstanding, the protest may not challenge the relative weight of the evaluation criteria or the formula specified for assigning points therefore contained in the request for proposals ("RFP") or request for qualifications ("RFQ") specifications.

All protests shall be submitted in writing to the Clerk of the Board pursuant to the procedures established in Section 2-8.4 and Administrative Order No. 3-21. The protest shall state with particularity the specific facts and grounds on which it is based, and shall include all pertinent documents and evidence and shall be accompanied by the corresponding filing fee. This shall form the basis for review of the protest and no other facts, grounds, documentation or evidence not contained in the protester's submission to the Clerk of the Board at the time of filing the protest shall be permitted in the consideration of the protest, except for such additional evidence as is allowed during the course of the protest proceedings.

A. Award Recommendations Over \$100,000

Award recommendations for contracts and purchases involving the expenditure of over \$100,000 will be in writing, signed by the issuing department to each competing Proposer announcing the recommended award, and a copy shall be deposited with the Clerk of the Board on the same day it is

mailed. Any protest Proposer must be filed with the Clerk of the Board within ten (10) working days of the date of the award recommendation letter. Within two (2) working days of that filing, the protester shall supply the County Attorney and each Proposer in the competitive process with a true copy of each document that was filed with the protest. A hearing examiner shall be appointed to hear the protest and submit a written report and recommendation to the County Manager within twenty (20) working days of the filing of the protest (maximum 25 working days if hearing examiner consents to extension request).

Failure to timely file any written protest shall constitute a waiver of the right to protest the award recommendation.

B. Award Recommendations Over \$25,000 and up to \$100,000

Award recommendations for contracts and purchases involving the expenditure of over \$25,000 up to and including \$100,000 shall be posted by 9:00 a.m., every Monday in the lobby of the Stephen P. Clark Center, 111 NW 1st Street, Miami, FL 33128. Such recommendations shall be in writing and shall identify the Proposer to whom the award is being recommended and the basis therefor. It is the responsibility of the Proposer to monitor such bulletin after proposal submission to ascertain that a recommendation for award has been made. Participants can call the Awards Line at 305-375-4724 or (800) 510-4724, or contact the person identified on the cover page of the solicitation.

Any protest by a Proposer must be filed with the Clerk of the Board within five (5) working days of the posting of the award recommendation, together with the \$500.00 nonrefundable filing fee. Award recommendations for which a protest is not received within the five (5) working day period shall be awarded in accordance with the department's recommendation. Not later than twenty (20) working days from the filing of the protest, the Director of the issuing department shall review the written recommendation for award and the written protest, and after consultation with the County Attorney, shall issue a recommendation to the County Manager for final disposition of the protest.

The department shall provide an opportunity to settle the protest by mutual agreement within five (5) working days of the filing of the protest.

Failure to timely file any written protest shall constitute a waiver for the right to protest the award recommendation.

C. Award Recommendations \$25,000 and Less

Award recommendations for contracts and purchases involving the expenditure of \$25,000 or less are considered final and may not be protested.

1.22 LOCAL PREFERENCE

The evaluation and ranking of proposals is subject to Ordinance No. 01-21 and Resolution No. R-514-02, which, except where Federal and State law mandates to the contrary, provides that a preference be given to a local Proposer if in the final ranking it is within 5% of the highest ranked Proposer and the highest ranked Proposer is a non-local business. Local business means the Proposer has a valid occupational license issued by Miami-Dade County or Broward County, at least one year prior to the proposal due date, to do business in Miami-Dade County that authorizes the business to provide the goods, services or construction to be purchased, and a physical business address located within the limits of Miami-Dade or Broward County from which the vendor operates or performs business. Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address. If the County extends local preferences to other Counties, those Counties will participate in local preference considerations.

The Proposer should complete, sign and submit the attached **Form A-5** "Local Business Preference" with the Technical Proposal in order to be considered for Local Preference.

1.23 RULES, REGULATIONS AND LICENSING REQUIREMENTS

The Proposer shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, especially those applicable to conflict of interest and collusion. Proposers are presumed to be familiar with all Federal, State and local laws, ordinances, codes, rules and regulations that may in any way affect the goods or services offered, especially Executive Order No. 11246 entitled "Equal Employment Opportunity" and as amended by Executive Order No. 11375, as supplemented by the Department of Labor Regulations (41 CFR, Part 60), the Americans with Disabilities Act of 1990 and implementing regulations, the Rehabilitation Act of 1973, as amended, Chapter 553 of Florida Statutes and any and all other local, State and Federal directives, ordinances, rules, orders, and laws relating to people with disabilities.

1.24 REVIEW OF PROPOSALS FOR RESPONSIVENESS

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in the RFP. A responsive proposal is one which follows the requirements of the RFP, includes all documentation, is submitted in the format outlined in the RFP, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in a proposal being deemed non-responsive.

1.25 CRIMINAL CONVICTION

Pursuant to Miami-Dade County Ordinance No. 94-34, "Any individual who has been convicted of a felony during the past ten years and any corporation, partnership, joint venture or other legal entity having an officer, director, or executive who has been convicted of a felony during the past ten years shall disclose this information prior to entering into a contract with or receiving funding from the County." Accordingly, Criminal Record Affidavit forms are available upon request at Department of Procurement Management/VIC at (305) 375-5773 for those individuals or firms requesting to disclose this information only.

1.26 QUARTERLY REPORTING WHEN SUB-CONTRACTORS ARE UTILIZED

Proposers are advised that when subcontractors or subconsultant are utilized to fulfill the terms and conditions of this contract, Miami-Dade County Resolution No. 1634-93 will apply to this contract. This resolution requires the selected Proposer to file quarterly reports as to the amount of contract monies received from the County and the amounts thereof that have been paid by the contractor directly to Black, Hispanic and Women-Owned businesses performing part of the contract work.

Additionally, the listed businesses are required to sign the reports, verifying their participation in the contract work and their receipt of such monies. For purposes of applicability, the requirements of this resolution shall be in addition to any other reporting requirements required by law, ordinance or administrative order.

1.27 INSPECTOR GENERAL REVIEWS**A. INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL REVIEW**

Pursuant to Miami-Dade County Administrative Order 3-20 and in connection with any award issued as a result of this RFP, the County has the right to retain the services of an Independent Private Sector Inspector General ("IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the selected Proposer shall make available, to the IPSIG retained by the County, all requested records and documentation pertaining to this RFP or any subsequent award, for inspection and copying. The County will be responsible for the payment of these IPSIG services, and under no circumstance shall the Proposer's cost/price for this RFP be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Proposer, its officers, agents, employees and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct, audit or investigate the operations, activities and performance of the selected Proposer in connection with this RFP or any contract issued as a result of this RFP. The terms of this provision are neither intended nor shall they be construed to impose any liability on the County by the selected Proposer or third party.

B. MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEW

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit of any Contract issued as a result of this RFP shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total proposed amount. The audit cost will be deducted by the County from progress payments to the selected Proposer. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above.

1.28 PUBLIC ENTITY CRIMES

Pursuant to Paragraph 2(a) of Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal for a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO (\$10,000) for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

1.29 REQUIRED LISTING OF SUBCONTRACTORS AND SUPPLIERS ON COUNTY CONTRACTS

Ordinance 97-104, amended by Ordinance 00-30, requires a bid or proposal for a County or Public Health Trust contract involving the expenditure of \$100,000 or more include a listing of subcontractors and suppliers who will be used on the contract. The required listing must be filed prior to the contract award. The required listing must be submitted even though the Proposer will not utilize subcontractors or suppliers on the contract. In the latter case, the listing must expressly state no subcontractors, or suppliers, as the case may be, will be used on the contract.

FORM A-7.1, OR A COMPARABLE LISTING MEETING THE REQUIREMENTS OF ORDINANCE NO. 97-104 AS AMENDED BY ORDINANCE NO. 00-30, MUST BE COMPLETED AND SUBMITTED EVEN THOUGH THE PROPOSER MAY NOT UTILIZE SUBCONTRACTORS OR SUPPLIERS FOR THIS PROPOSAL. THE PROPOSER SHOULD ENTER THE WORD "NONE" UNDER THE APPROPRIATE HEADING(S) ON FORM A-7.1 IN THOSE INSTANCES WHERE NO SUBCONTRACTORS AND/OR SUPPLIERS WILL BE USED ON THIS PROPOSAL.

1.30 FAIR SUBCONTRACTING POLICIES (Ordinance 97-35)

All selected Proposers on County contracts in which subcontractors may be used shall be subject to and comply with Ordinance 97-35 as amended, requiring Proposers to provide a detailed statement of their

policies and procedures for awarding subcontracts which:

- a) notifies the broadest number of local subcontractors of the opportunity to be awarded a subcontract;
- b) invites local subcontractors to submit bids/proposals in a practical, expedient way;
- c) provides local subcontractors access to information necessary to prepare and formulate a subcontracting bid/proposal;
- d) allows local subcontractors to meet with appropriate personnel of the Proposer to discuss the Proposer's requirements; and
- e) awards subcontracts based on full and complete consideration of all submitted proposals and in accordance with the Proposer's stated objectives.

All Proposers seeking to contract with the County shall, as a condition of award, provide a statement of their subcontracting policies and procedures (**see attached Form A-7.2**). Proposers who fail to provide a statement of their policies and procedures may not be recommended by the County Manager for award by the Board of County Commissioners.

The term "local" means having headquarters located in Miami-Dade County or having a place of business located in Miami-Dade County from which the contract or subcontract will be performed.

The term "subcontractor" means a business independent of a Proposer that may agree with the Proposer to perform a portion of a contract.

The term "subcontract" means an agreement between a Proposer and a subcontractor to perform a portion of a contract between the Proposer and the County.

1.31 Intentionally left blank

1.32 AFFIRMATIVE ACTION/NON DISCRIMINATION OF EMPLOYMENT, PROMOTION AND PROCUREMENT PRACTICES (ORDINANCE NO. 98-30)

In accordance with the requirements of Ordinance No. 98-30, all firms with annual gross revenues in excess of \$5 million seeking to contract with Miami-Dade County shall, as a condition of award, have a written Affirmative Action Plan and Procurement Policy on file with the County's Department of Business Development. Said firms must also submit, as a part of their proposals/bids to be filed with the Clerk of the Board, an appropriately completed and signed Affirmative Action Plan/Procurement Policy Affidavit (**see attached Form A-8.2**). Firms whose Boards of Directors are representative of the population make-up of the nation are exempt from this requirement and must submit, in writing, a detailed listing of their Boards of Directors, showing the race or ethnicity of each board member, to the County's Department of Business Development. Firms claiming exemption must submit, as part of their proposal/bids to be filed with the Clerk of the Board, an appropriately completed and signed Exemption Affidavit (**see attached Form A-8.1**) in accordance with Ordinance 98-30. These submittals shall be subject to periodic reviews to assure that the entities do not discriminate in their employment and procurement practices against minorities and women-owned businesses.

It will be the responsibility of each firm to provide verification of their gross annual revenues to determine the requirement for compliance with the Ordinance. Those firms that do not exceed \$5 million annual gross revenues must clearly state so in their bid/proposal.

1.33 AFFIDAVIT- PAID FEES, TAXES, PARKING TICKETS AND OBLIGATIONS ARE NOT IN ARREARS

In accordance with Section 2-8.1 (c) of the Miami-Dade County Code, and as amended by County Ordinance No. 00-30, and Section 2-8.1(h) as amended by Ordinance No. 00-67, the Proposer shall certify that all delinquent and currently due fees, taxes, parking tickets and that Proposer is not in arrears on obligations to the County. (See attached **Form A-10**.)

1.34 CODE OF BUSINESS ETHICS

In accordance with Section 2-8.(1) of the Code of Miami-Dade County each person or entity that seeks to do business with Miami-Dade County shall have or shall adopt a Code of Business Ethics ("Code") and shall, prior to execution of any contract between the contractor and the County, submit an affidavit stating that the contractor has adopted a Code that complies with the requirements of Section 2-8.1(i) of the Miami-Dade County Code (see attached **Form A-12**). Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.

1.35 BANKRUPTCY

Any Proposer who, at the time of proposal submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, may be non-responsive.

1.36 DOMESTIC VIOLENCE LEAVE AFFIDAVIT

Prior to entering into any contract with the County, a firm desiring to do business with the County shall, as a condition of award, certify that it is in compliance with the Domestic Leave Ordinance, 99-5 and Section 11A-60 of the Miami-Dade County Code. This Ordinance applies to employers that have, in the regular course of business, fifty (50) or more employees working in Miami-Dade County for each working day during each of twenty (20) or more calendar work weeks in the current or preceding calendar year. In accordance with Resolution R-185-00, the obligation to provide domestic violence leave to employees shall be a contractual obligation. The County shall not enter into a contract with any firm that has not certified its compliance with the Domestic Leave Ordinance (see attached **Form A-13**). Failure to comply with the requirements of Resolution R-185-00, as well as the Domestic Leave Ordinance may result in the contract being declared void, the contract being terminated and/or the firm being debarred.

1.37 COUNTY USER ACCESS PROGRAM (UAP)**User Access Fee**

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, the contract resulting from this solicitation is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The selected proposer providing goods or services under this contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Proposer participation in this invoice reduction portion of the UAP is mandatory.

Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive Miami-Dade County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The selected proposer must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Selected proposer participation in this joint purchase portion of the UAP, however, is voluntary. The selected proposer shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a

decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the successful selected proposer shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

Miami-Dade County shall have no liability to the selected proposer for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the selected proposer and shall be paid by the ordering entity less the 2% UAP.

Proposer Compliance

If a selected proposer fails to comply with this section that selected proposer may be considered in default by Miami-Dade County in accordance with Section 5, Article 24 Event of Default, of this contract solicitation and the resulting contract.

1.38 ORDINANCES, RESOLUTIONS AND/OR ADMINISTRATIVE ORDERS

To request a copy of any ordinance, resolution and/or administrative order cited in this Solicitation, the Proposer must contact the **Clerk of the Board at (305) 375-5126**.

SECTION 2.0 - SCOPE OF SERVICES

2.1 INTRODUCTION/BACKGROUND

The Miami-Dade County Park and Recreation Department is seeking qualified firms interested in operating Miami Metrozoo's food service facilities and retail sales. Proposers must demonstrate experience in the provision of concession services facilities plus any other related activities including knowledge of the legal requirements that are involved in this type of operation. Proposers must also provide evidence of adequate financial strength to provide all equipment, operations and reasonable working capital, as well as a minimum of five (5) years experience in providing food concessions in large attractions, entertainment or recreational settings. Proposer will be required to provide all furnishings, fixtures, and equipment necessary for this operation.

Concession Services

The selected Proposer shall provide concession services in a manner that provides a high level of service and quality to park patrons under a five year contract with two, two year renewals available. At a minimum, concession services must be provided on a set schedule, during the regularly scheduled operating hours of Metrozoo, subject to approval by the Department of Parks and Recreation.

Operating since 1981, Metrozoo exhibits more than 1,300 animals representing over 400 species in a cageless setting that closely approximates the animals' natural habitats. With nearly 300 developed acres on a 740-acre parcel of land, Metrozoo is the only zoo in the continental United States located in a subtropical climate. Metrozoo's mission is to encourage an appreciation for the world's wildlife and to help conserve it for future generations.

Miami Metrozoo is owned by Miami-Dade County and operates as a division of the Park and Recreation Department. The Zoological Society of Florida, a 501c(3) not-for-profit corporation, supports Metrozoo with volunteers, educational programming, marketing and development related activities, special events, and membership programs.

The Society currently operates Metrozoo's retail facilities under an agreement that extends through November 18, 2006. Should a determination be made that a new concessionaire provide Gift and Novelty Concession services, the Society would need to concur with the decision and relinquish its rights to the existing agreement through concurrent action approved by the Society Board and the Board of County Commissioners. The County expressly reserves the right to reject all proposals submitted in response to this Request for Proposals in the event that these issues cannot be resolved.

Retail Sales

Parks and Recreation is also seeking proposals for the Operations of Retail Sales. Proposer's may submit proposals for Retail Sales operations services as identified in Section 2.0 of this RFP document. The County has sole discretion of accepting proposals for Retail Services Operations.

The selected Proposer shall provide Retail services in a manner that provides a high level of service and quality to park patrons. At a minimum, Retail services must be provided on a set schedule, during the regularly scheduled operating hours of Metrozoo, subject to approval by the Department of Parks and Recreation. Proposers must demonstrate experience in the provision of retail sales plus any other related activities including knowledge of the legal requirements that are involved in this type of operation. Proposers must also provide evidence of adequate financial strength to provide all equipment, operations and reasonable working capital, as well as a minimum of five (5) years experience in providing retail sales in large attractions, entertainment or recreational settings. Proposer will be required to provide all furnishings, fixtures, and equipment necessary for this operation.

Proposer's may submit a proposal for Food Services and Retail Sales combined or a proposal may be submitted for one of the two services. The County will have the option of selecting two separate proposer's or one proposer that will provide both services as may be in the best interest of the County.

2.2 REQUIREMENTS AND SERVICES TO BE PROVIDED

CONCESSION SERVICES

The requirements of this Scope of Services will be the responsibility of the successful Proposer and information concerning these requirements must be submitted by Proposer's as part of their Proposal:

- a. Provide an operation that will be safe, customer oriented with prompt service, complaint resolution, effective employee performance and training and timely initiation and completion of all work.
- b. Furnish good, prompt and efficient service, adequate to meet all reasonable demands, including establishing a minimum schedule for hours of operation, subject to approval by the Department. Minimum foodservice standards are attached to the sample agreement as exhibit D
- c. The selected Proposer and employees shall be distinctively uniformed or appropriately attired. All personnel must meet the Zoo's standards for appearance and standards of conduct. The Miami Metrozoo has an absolute right of approval over selection and tenure of all on-site management.

- d. The selected Proposer shall take good care of facilities and shall use the same in a careful manner and shall at its own cost and expense repair County property of facilities damaged by its operations under this contract.
- e. The selected proposer shall provide high quality mobile carts for concession service throughout the park.
- f. The selected Proposer should promote Metrozoo through marketing and the quality provision of food and beverages with the highest level of service to the public.
- g. Additional services and fees for foodservice and patron services to be by mutual agreement between the selected Proposer and the Department.
- h. The selected proposer will be responsible for the daily upkeep of the food service and carts. The floors will be kept free of debris, displays will be kept stocked and clean, window displays will be rotated regularly and seasonally appropriated stock levels will be maintained.

2.3 OVERVIEW

Miami Metrozoo is located in southwest Miami-Dade County at 12400 S.W. 152 Street, approximately ¼ mile from the Florida Turnpike exit on S.W. 152 Street.

A. FOOD FACILITIES

Three (3) Food concession locations with adjacent outdoor eating areas.
Centralized warehouse with commissary facilities

B. HOURS AND DAYS OF OPERATION

Metrozoo is currently open to the public 365 days a year from 9:30 a.m. until 5:30 p.m.

C. ZOO ATTENDANCE

An overview of Metrozoo's fiscal year (Begins October 1st) attendance is outlined below:

<u>Fiscal Year</u>	<u>Total Attendance</u>
10/1/2003-9/30/2004	558,000 (projected)
10/1/2002-9/30/2003	492,523
10/1/2001-9/30/2002	452,883
10/1/2000-9/30/2001	451,435
10/1/1999-9/30/2000	431,812
10/1/1998-9/30/1999	389,566

Breakdown

General Admission 50%
Group & Education 18%
Free 32%

Current Zoo admission rates are \$12.00 for Adults; \$7.00 for Children (3 – 12) and free for children 2 and under.

D. CAPITAL INVESTMENT

Capital investments by the selected Proposer mutually agreed upon between Metrozoo and the selected Proposer will be amortized over an agreed useful life. The County will reimburse the selected Proposer the UN-amortized balance of capital investments in the event the contract is terminated by the County for convenience.

E. SPECIAL EVENTS CATERING

This Request for Proposals does not include exclusive catering rights for special events at Metrozoo. However, Metrozoo and the selected Proposer will jointly pursue development of catering and rental opportunities for parties, receptions, corporate retreats, and after-hour functions as a business strategy for Metrozoo.

F. SPONSORSHIPS

Metrozoo reserves the right to enter into sponsorship agreements. The selected Proposer is expected to work in good faith to meet the terms and conditions of the sponsorship agreements, and Metrozoo or its assignees shall be entitled to all sponsorship income and/or commissions relating thereto. Further, the selected Proposer will be expected to work in good faith with Metrozoo to accommodate the requirements of future sponsorship arrangements Metrozoo may pursue.

2.4 DESCRIPTION OF FOOD SERVICE OPERATIONS**A. LOCATIONS**

The primary food service facility is the Lakeside Pavilion, located centrally in the zoo and adjacent to a children's play area. This location (approximately 2,200 sq. ft.) offers full beverage and food service through four (4) service windows and includes a commissary kitchen. There is an adjacent covered outdoor eating area with seating for approximately 200, as well as two air conditioned shelters (approximately 1,000 sq. ft. each) with seating for 96 in each.

The Paws food service facility (approximately 700 sq. ft.), in the children's zoo, also offers full beverage and food service through four (4) service windows. There is an adjacent outdoor patio with seating for approximately 80.

The third food service facility, approximately 360 sq. ft., is located just inside the entrance across from the flamingo pond. This location offers limited beverage and food service through three (3) service windows. There is adjacent outdoor seating for approximately 30.

The current food service vendor also operates a variety of vendor-owned mobile carts that for product specific sales – frozen lemonade, snow cones, cotton candy, and ethnic specialties. The number of carts varies with attendance.

A commissary/warehouse (approximately 2,240 sq.ft.) has office space and is used for bulk storage, and contains walk-in refrigerators and freezers.

B. SALES HISTORY

Gross Food Sales	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
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Lakeside	\$702,277	\$664,504	\$738,489	\$ N/A
PAWS	\$357,090	\$361,397	\$369,249	\$ N/A
Flamingo Pond	\$130,933	\$139,896	\$123,084	\$ N/A
Total Sales	\$1,190,300	\$1,165,797	\$1,230,832	\$1,322,615

In 2002, the top food sales items, non-beverage, were:

- ◆ Hot Dog
- ◆ French Fries
- ◆ Hamburgers
- ◆ Chicken Fingers
- ◆ Chicken Sandwich

PROPOSERS ARE ENCOURAGED TO PROVIDE PROPOSALS FOR RETAIL FACILITIES. THE COUNTY WILL HAVE THE SOLE DISCRETION OF SELECTING ONE PROPOSER FOR BOTH THE FOOD CONCESSION SERVICES AND RETAIL SALES SERVICES OR ONE PROPOSER FOR EACH OF THE SERVICES.

RETAIL SALES

The requirements of this Scope of Services will be the responsibility of the successful Proposer and information concerning these requirements must be submitted by Proposer's as part of their Proposal:

- a. Provide an operation that will be safe, customer oriented with prompt service, complaint resolution, effective employee performance and training and timely initiation and completion of all work.
- b. Furnish good, prompt and efficient service, adequate to meet all reasonable demands, including establishing a minimum schedule for hours of operation, subject to approval by the Department.
- c. The selected Proposer and employees shall be distinctively uniformed or appropriately attired. All personnel must meet the Zoo's standards for appearance and standards of conduct. The Miami Metrozoo has an absolute right of approval over selection and tenure of all on-site management.
- d. The selected Proposer shall take good care of facilities and shall use the same in a careful manner and shall at its own cost and expense repair County property of facilities damaged by its operations under this contract.
- e. The selected Proposer should promote Metrozoo through marketing and the quality provision of retail sales with the highest level of service to the public.
- f. Additional services and fees for retail sales and patron services shall be by mutual agreement between the selected Proposer and the Park and Recreation Department.
- g. The selected proposer will be responsible for the daily upkeep of the gift shops. The floors will be kept free of debris, displays will be kept stocked and clean, window displays will be rotated regularly and seasonally appropriated stock levels will be

maintained.

2.5 DESCRIPTION OF CURRENT RETAIL OPERATIONS

A. LOCATIONS

Metro Zoo has three (3) Gift Shop Locations.

The main gift shop, Toucan Trader, has approximately 3,200 sq. ft. of retail floor space. It is located between the entrance and exit so that the public will pass by as they enter as well as exit the Zoo.

The second location is a 400 sq. ft. shop in the aviary temple building, adjacent to the exit. This gift shop opened May 2003.

A third location, of approximately 75 sq. ft., is located in the Dr. Wilde's World exhibit hall. This gift shop is only open when special exhibits or attendance provide for revenue opportunities.

The selected proposer will be required to purchase existing retail inventory owned by the Zoological Society of South Florida under terms and conditions to be finalized during the contract negotiation period.

B. SALES HISTORY

Total Gross Retail Sales	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
All Three Gift Shops	\$ 632,311	\$ 668,820	\$ 598,329	\$ 646,624

In 2002, the top five retail categories were:

- ◆ Kid's line (toys)
- ◆ Clothing (T shirts, etc.)
- ◆ Plush (stuffed animals)
- ◆ Accessories (jewelry)
- ◆ Gift items (figurines, etc.)

2.6 OTHER SERVICE REQUIREMENTS

The Proposer is expected to be fully familiar with the terms and conditions contained in the Draft Agreement in Section V herein. It is the intent of the Department to provide the best possible service to the public. It is the Department's further intent to gain revenues. However, the Department makes no guarantee the Department or the County will act, promote, approve, assist or cooperate in any manner to assure that this project will be a financial success for the County or for the selected Proposer.

SECTION 3.0 - PROPOSAL FORMAT

3.1 INSTRUCTIONS TO PROPOSERS

Proposers should carefully follow the format and instructions outlined below, observing format requirements where indicated. All materials (except for plans and schematics, if any) are to be submitted on 8 1/2" X 11" pages, neatly typed on one side only, with normal margins and spacing. All documents and information must be fully completed and signed as required. The original document package must not be bound. The document package copies should be individually bound. Proposals that do not include the required documents may be deemed non-responsive and may not be considered for contract award.

3.2 CONTENTS OF PROPOSAL

The proposal must consist of two separate parts: (A) Technical Proposal, and (B) Price Proposal, as follows:

A. TECHNICAL PROPOSAL

The Technical Proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the proposed services. No cost information is to be included with the Technical Proposal. The Technical Proposal must include the following information:

1) Cover Page

The attached **Form A-1** is to be used as the cover page for the Technical Proposal. This form must be fully completed and signed by an authorized officer of the Proposer submitting the proposal.

2) Table of Contents

The table of contents should outline in sequential order the major areas of the proposal. All pages of the proposal, including the enclosures, must be clearly and consecutively numbered and correspond to the table of contents.

3) Executive Summary

Provide a brief summary describing the Proposer's ability to perform the work requested in this RFP; a history of the Proposer's background and experience in providing similar services; the qualifications of the Proposer's personnel to be assigned to this project; the subcontractors or subconsultants and a brief history of their background and experience; and, any other information called for by this RFP which the Proposer deems relevant, including any exceptions to this RFP. This summary should be brief and concise to advise the reader of the basic services offered, experience and qualifications of the Proposer, staff, subcontractors or subconsultants and any other relevant information.

4) Minimum Qualification Requirements

Proposers shall provide documentation that demonstrates their ability to satisfy all of the minimum qualification requirements. Proposers who do not meet the minimum qualification requirements or who fail to provide supporting documentation will not be considered for award. If a prescribed format or required documentation for the response to minimum qualification requirements is listed below, Proposers must use said format and supply said documentation.

There are no minimum qualification requirements for Food Concessions or Retail Sales Services for this RFP.

5) Technical Information

At a minimum the following information should be provided for Food Concession Services. Proposers wishing to propose for both Food Concessions and Retail Sales Services should provide requested information for both services. Information shall be intended for each service and clearly indicated.

- (a) Describe Proposer's project plan, methodology and recommended solutions in performing the services described in the Scope of Services (**see Section 2.0**), and describe Proposer's specific policies, plans, procedures or techniques to be used in providing the services to be performed. The Proposer shall describe its approach to project organization and management, responsibilities of Proposer's management and staff personnel that will perform work in this project.
- (b) List the names and addresses of all major first tier subcontractors or subconsultants, and describe the extent of work to be performed by each first tier subcontractor or subconsultant.
- (c) Provide a project schedule identifying specific key tasks, and duration.
- (d) Identify if Proposer's proposed plan meets the requirements of the Scope of Services described in Section 2.0, will meet the requirements with modifications (explain how), or cannot provide the requirements.
- (e) Provide a Pro Forma Statement showing five (5) years of projected sales and expenses. **DO NOT INCLUDE PAYMENTS TO COUNTY, OR ANY IMPROVEMENT COSTS.** Inflated statements or statements skewed outside normal operating ranges may be evaluated as less desirable than reasonable Pro Forma Statements.
- (f) For Proposer's intended capital improvements, a site plan, floor plans and elevation of structure(s) to be improved or constructed, as described in the Construction Rider which is attached in Section 5.0, Exhibit D, must be included its Proposal.
A construction cost estimate of proposed improvements by the Proposer shall be included in the Price Proposal (see Form B-1) and not the Technical Proposal.

6) Proposer's Experience and Past Performance

- (a) Describe the Proposer past performance and experience and state the number of years that the Proposer has been in existence, the current number of employees, and the primary markets served.
- (b) Provide a detailed description of comparable contracts (similar in scope of services to those requested herein) which the Proposer has either ongoing or completed within the past three years. The description should identify for each project: (i) the client, (ii) description of work, (iii) total dollar value of the contract, (iv) contract duration, (v) customer contact person and phone number for reference, (vi) statement or notation of whether Proposer is/was the prime contractor or subcontractor or subconsultant, and (vii) the results of the project. Where possible, list and describe those projects performed for government clients or similar size private entities and any work performed for the County.
- (c) List all contracts which the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with County Ordinance No. 98-42, which requires that "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County

Contracts." As such the Proposer must list and describe all work performed for Miami-Dade County and include the name of the County Department which administers or administered the contract(s); the contact person(s) on the contract(s) and their telephone number; the dates covering the term of the contract(s); and, the dollar value of the contract(s).

- (d) Describe any other experiences related to the work or services described in the Scope of Services (**see Section 2.0**), and any other information which may be specific to the required services to be provided (e.g. software/hardware information, training, etc.).

7) Key Personnel and Subcontractors Performing Services

- (a) Provide an organization chart showing all individuals, including their titles, to be assigned to this project. This chart must clearly identify the Proposer's employees and those of the subcontractors or subconsultants.
- (b) Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of all key individuals and subcontractors or subconsultants who will be assigned to this project. This information shall include the functions to be performed by the key individuals and the subcontractors or subconsultants.
- (c) Provide resumes with job descriptions and other detailed qualification information on all key personnel who will be assigned to this project, including any subcontractors or subconsultants. All key personnel includes all partners, managers, seniors and other professional staff that will perform work and/or services in this project.

Note: After proposal submission, but prior to the award of any contract issued as a result of this RFP, the Proposer has a continuing obligation to advise the County of any changes, intended or otherwise, to the key personnel identified in its proposal.

8) Affidavits/Acknowledgements

The Proposer must complete, sign as required, and submit the following documents as part of its Technical Proposal:

- Form A-1 Cover Page of Technical Proposal
- Form A-2 Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentations (**see Section 1.17**)
- Form A-3 Acknowledgement of Addenda (**see Section 1.8**)
- Form A-4 Disability Nondiscrimination Affidavit
- Form A-5 Local Preference Information (**see Section 1.22**)
- Form A-7.1 Proposer's Disclosure of Subcontractors and Suppliers (**see Section 1.29**)
- Form A-7.2 Proposer's Disclosure of Fair Subcontracting Policies (**see Section 1.30**)
- Form A-8.1 Affirmative Action Plan Exemption Affidavit (if applicable) – (**see Section 1.32**)
- Form A-8.2 Affirmative Action Plan Affidavit (**see Section 1.32**)
- Form A-10 Miami-Dade County Collection of Taxes, Fees and Parking Tickets Affidavit and Individuals & Entities Attesting Being Current In Their Obligations to Miami-Dade County
- Form A-12 Code of Business Ethics
- Form A-13 Domestic Violence Leave Affidavit

In addition, the Proposer must follow the instructions for the BBE, HBE and/or WBE participation provisions described in Section 1.7 "Contract Measures" and the instructions of the attached Appendix

A "Participation Provisions", and complete, sign as required, and submit with proposal any required form(s) as may be applicable.

B. PRICE PROPOSAL

The Proposer must submit the Price Proposal in a separate **sealed** envelope or package (**separate from the Technical Proposal**) clearly marked on the sealed envelope or package "**PRICE PROPOSAL**", together with the Proposer's name, RFP Number and RFP title. The Proposer may submit the separate sealed Price Proposal inside the same container or package together with the separate Technical Proposal. The Proposer's price shall be submitted on **Form B-1 "Price Proposal Schedule"**, and in the manner required on said attachment form; there are no exceptions allowed to this requirement. If the Proposer wishes to submit an alternate pricing, the Proposer must first submit pricing in accordance with the **Form B-1**, and then include a separate alternate pricing in a separate sealed envelope marked "ALTERNATE PRICE PROPOSAL" on the sealed envelope and on the first page of the alternate pricing. Proposers who do not submit pricing in accordance with **Form B-1** will not receive evaluation points for the Price/Cost portion. The alternate pricing will not be scored for evaluation purposes, but may be considered by the County if the Proposer is selected for negotiations. The Price Proposal must contain all information required on the Price Proposal Schedule as follows:

Note: The Price Proposal shall consist of one original and ten copies.

1. Total Price that includes all costs associated with providing all requirements of the RFP solicitation.
2. Detailed staffing table by major task that reflects total staff hours by individuals or discipline and hourly rates.
3. Projection of Proposer's operational costs of this project for each year.

3.3 PROPOSAL PREPARATION REQUIREMENTS

Proposers must follow instructions of Section 1.4 "Proposal Submission". The proposal must consist of two separate parts: a) Technical Proposal (original and all copies), and b) sealed Price Proposal (original and all copies). The Technical Proposal must be packaged separately from the sealed Price Proposal, and both must be submitted in a sealed envelope or container that should be addressed as follows:

Proposer's Name
Proposer's Address
Proposer's Telephone Number

Clerk of the Board
Stephen P. Clark Center
111 NW 1st Street, 17th Floor, Suite 202
Miami, FL 33128-1983

RFP No.:
RFP Title:
Proposal Due Date:

SECTION 4.0 - EVALUATION/SELECTION PROCESS

4.1 INTRODUCTION

Following the opening of the proposal packages, the proposals will be evaluated by an Evaluation/Selection Committee appointed by the County Manager. The Committee will be comprised of appropriate County personnel from multiple departments and members of the community, as deemed necessary, with the appropriate experience and/or knowledge, striving to ensure that the Committee is balanced with regard to both ethnicity and gender.

Contract award will be based on two separate evaluation phases: Technical (Quality) and Price. The Proposer shall ensure that each phase is placed in a separately sealed package. Scoring proposals is based on point totals and not a percentage factor.

4.2 TECHNICAL PROPOSAL EVALUATION

The Evaluation/Selection Committee will first evaluate and rank responsive proposals on the Technical (Quality) criteria listed below. The criteria are itemized with their respective weights for a maximum total of Eighty (80) points per each Evaluation/Selection Committee member, for all Technical criteria. A Proposer may receive the maximum points or a portion of this score depending on the merit of its proposal, as judged by the Evaluation/Selection Committee in accordance with:

Concession Services

<u>Criteria</u>	<u>Points</u>
1. Proposer's experience, qualifications and capabilities in providing concession services and other related activities as described in this RFP.	(25)
2. Experience and qualifications of the key personnel including subcontractors, that will be assigned to this project in providing concession services.	(10)
3. Proposer's management approach to provide the type of services described in this RFP.	(35)
4. Proposer's Pro Forma and Financial Capability	(10)

Retail Sales

<u>Criteria</u>	<u>Points</u>
1. Proposer's experience, qualifications and capabilities in providing retail sales services and other related activities as described in this RFP.	(25)
2. Experience and qualifications of the key personnel including subcontractors, that will be assigned to this project in providing retail sales services.	(10)
3. Proposer's management approach to	(35)

provide the type of services described in this RFP.

4. Proposer's Pro Forma and Financial Capability (10)

Upon completion of the Technical (Quality) criteria evaluation, rating and ranking, the Committee may choose to conduct an oral presentation(s) with the Proposer(s) which the Evaluation/Selection Committee deems to warrant further consideration based on the best rated proposal providing the highest quality of service to the County; scores in clusters; significant breaks in scoring; and/or maintaining competition. Upon completion of the oral presentation(s), the Committee will re-evaluate, re-rate and re-rank the proposals remaining in consideration based upon the written documents combined with the oral presentation.

4.3 PRICE PROPOSAL EVALUATION

After the Evaluation/Selection Committee re-evaluates the Technical Proposals, in light of the oral presentation(s) if necessary, it will then evaluate the Price Proposals of those Proposers remaining in consideration.

The sealed Price Proposal envelopes of the Proposers remaining in consideration will then be opened in the presence of the Evaluation/Selection Committee. Price will be considered separately and only after the evaluation of the Technical (Quality) Proposals has been completed by the Evaluation/Selection Committee.

Concession Services

	<u>Criteria</u>	<u>Points</u>
1.	Minimum Monthly Guarantee	5
2.	Percentage of Monthly Gross Receipts Based on Pro Forma	10
3.	Minimum Capital Investment	5

Retail Sales

	<u>Criteria</u>	<u>Points</u>
1.	Minimum Monthly Guarantee	5
2.	Percentage of Monthly Gross Receipts Based on Pro Forma	10
3.	Minimum Capital Investment	5

The Price Proposal submission will be assigned a maximum of twenty (20) points per each Evaluation/Selection Committee member. The Price will be evaluated in the following manner:

1. The responsive proposal with the highest total price will be given the full weight of twenty points assigned to the price criterion.
2. Every other proposal will be given points proportionately in relation to the highest proposal. This point total will be calculated by dividing the highest price by the total price of the proposal being evaluated with the result being multiplied by the maximum weight for price (20 points) to arrive at a cost score of less than the

full score for price.

$$\text{Example: } \frac{\text{Proposer's Proposed Price}}{\text{Highest Proposed Price}} \times \text{Total Points for each Price criteria} = \text{Price Score}$$

The application of the above formula will result in a uniform assignment of points relative to the criterion of price.

The pricing formula is used as part of the evaluation process to determine the highest ranked proposer. The County reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the County.

4.4 APPLICATION OF SELECTION FACTOR

Not Applicable

4.5 OVERALL RANKING

The Evaluation/Selection Committee will then determine the overall ranking by adding the Price Proposal evaluation score with the Technical (Quality) evaluation score and all other applicable additional points specified in this solicitation, to determine the overall ranking.

Following the evaluation and ranking of the proposals, the Evaluation/Selection Committee will recommend to the County Manager that a contract be negotiated with the highest ranked responsive and responsible Proposer, except as provided for below in Section 4.6 "Local Preference". Upon concurrence of the County Manager, the County shall enter into negotiations with the recommended Proposer.

The Proposer recommended for negotiations shall provide to the County:

- a) Its most recent certified business financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, together with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. A copy of the most recent business income tax return will be accepted if certified financial statements are unavailable.
- b) Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors or subconsultants is or has been involved within the last three (3) years.

4.6 LOCAL PREFERENCE

Local Preference may be taken into consideration in accordance with Section 1.22 "Local Preference". If, following the completion of final rankings by the Evaluation/Selection Committee, a non-local Proposer is the highest ranked responsive and responsible Proposer, and the ranking of a responsive and responsible local Proposer is within 5% of the ranking obtained by said non-local Proposer, then the Evaluation/Selection Committee will recommend to the County Manager that a contract be negotiated with said local Proposer.

4.7 CONTRACT AWARD

Any negotiated contract, as a result of the RFP, will be submitted to the Board of County Commissioners for their approval. **All Proposers will be notified in writing when the County Manager makes an award**

recommendation. The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed by the Board of County Commissioners to be in the best interest of the County. The Board of County Commissioners' decision of whether to make the award and which proposal is in the best interest of the County shall be final.

**CONCESSION AND OPERATING AGREEMENT
METROZOO FOODSERVICE**

THIS AGREEMENT made and entered into as of this ____ day of _____, 2004 by and between _____, a corporation organized and existing under the laws of the State of Florida, having its principal office at _____ (hereinafter referred to as the "Concessionaire"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the County owns and operates Miami Metrozoo located at 12400 SW 152nd Street, Miami Florida (the "Park") for the recreation, education and entertainment of park patrons, which facilities are administered for the County by its Director of the Park and Recreation Department, or designee (the "Department"); and,

WHEREAS, the Concessionaire has offered to operate the concession facilities and provide public food service for the County; Miami-Dade County's Request for Proposals (RFP) No. ____ and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Concessionaire has submitted a written proposal dated _____, hereinafter referred to as the "Concessionaire's Proposal" which is incorporated by reference herein; and,

WHEREAS, the proposal of the Concessionaire is recommended as being in the best interest of the County, and formed the basis for award of this Agreement,

NOW THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

1. **Use:** The County hereby grants unto the Concessionaire, and the Concessionaire hereby accepts from the County, the right to operate the concession facilities at Miami Metrozoo (the "Facilities"). Concessionaire shall use the Demised Premises only for the use permitted. The Concessionaire shall not provide any services or sell any item or product without the prior written approval of the Department, and any sales by the Concessionaire of services or items not specifically authorized in writing by the Department shall constitute a default. The unapproved services or items shall be discontinued immediately by the Concessionaire upon written notice from the Department. Concessionaire shall conduct its business at all times in accordance with this Concession and Operating Agreement.
2. **Operations:** Except when and to the extent that the Demised Premises may be untenable by reason of damage by fire or other casualty, Concessionaire shall continuously and uninterruptedly use, occupy and operate for purposes outlined herein all of the Demised Premises other than such minor portions thereof as are reasonably required for storage and office purposes, and such storage and office space only in connection with the business conducted by Concessionaire in the Demised Premises; and will have on the premises adequately trained personnel for efficient and courteous service to customers.
3. **Limitations on Use:** Subject to Concessionaire's right to use the Demised Premises for the purposes specified in Paragraph 1, Concessionaire shall not suffer or permit the Demised Premises or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any Legal Requirements or Insurance Requirements; (ii) cause structural injury to the Demised Premises or Park or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Demised Premises or Park; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Demised Premises or Park or the proper and economic functioning of any other common service facility or common utility of the Demised Premises or Park; (vi) impair or interfere with the physical convenience of any of the occupants of the Demised Premises or Park; or (vii) impair any of the Concessionaire's other

obligations under this Agreement.

4. **Governmental Approvals:** If any governmental license or permit shall be required for the proper and lawful conduct of Concessionaire's business in the Demised Premises, or any part thereof, and if failure to secure such license or permit would in any way adversely affect the County, Concessionaire, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to inspection by the County. Concessionaire shall at all times comply with the terms and conditions of each license and permit.
5. **Clean Condition:** Throughout the term of this Concession and Operating Agreement, Concessionaire at its sole cost and expense will keep the Demised Premises clean and in good condition and order.
6. **Exclusivity/Non-exclusivity:** This Agreement is non-exclusive in character and in no way prevents the County from authorizing or offering competitive services, products or items by other concessionaires or others in other premises owned and operated by the County or from authorizing other concession services within the Park. The Concessionaire shall have no rights to any other location or concession that may be made available by the County.
7. **Request for Proposal Incorporated:** The Concessionaire acknowledges that it has submitted to the County a proposal ("Concessionaire's Proposal") that was the basis for the award of this Agreement and upon which the County has relied. The terms and conditions of the County's Request for Proposal are hereby incorporated by reference.
8. **Exhibits:** The Exhibits listed in this Paragraph and attached to this Agreement are hereby incorporated in and made a part of this Agreement:
 - Exhibit A: Map of Demised Premises
 - Exhibit B: Scope of Services
 - Exhibit C: Initially Approved Hours of Operations, Retail Items and Prices
 - Exhibit D: Foodservice Standards
 - Exhibit E: Construction Rider (if applicable)
 - Exhibit F: Payment of Utility Services (if applicable)

9. **Demised Premises:** County hereby grants to the Concessionaire and the Concessionaire hereby accepts from County for the term, at the rate, and upon the covenants and conditions set forth in this Concession and Operating Agreement, the Demised Premises in the Park as more particularly shown on Exhibit A, attached hereto and incorporated herein by reference, hereinafter referred to as the "Demised Premises." The Demised Premises extend to the area as detailed in Exhibit A. The County reserves the right to install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Demised Premises in locations which will not substantially interfere with Concessionaire's use thereof, and serving other parts of the Park.
10. **Term:** The County hereby grants to the Concessionaire for a term of five (5) years, the premises described in Paragraph Nine (9) hereof to be operated as a Concession Facility. The term and Commencement Date of this Concession and Operating Agreement shall begin on the 1st day of the month following its execution or on the date the Concessionaire's operation is open for business, whichever occurs first.
11. **Option to Renew:** The County, at its sole option, can renew the Concession and Operating Agreement for two (2) additional one (1) year renewal periods.
12. **Option to Extend:** With prior written Departmental approval of permanent improvements, the County may at its sole option extend the current term of this Agreement in consideration of such improvements, which benefit the Park. Permanent improvements shall mean constructing new structures or infrastructure (permanent new utilities, roadways, paths, facilities, or other land improvements) or renovations not originally considered in award of this Agreement. Only the actual cost of constructing the permanent improvement shall be considered in determining any extension. No design costs, legal, accounting, financial, permit, bond, insurance, tax, personal property or like costs in excess of 8% of actual improvement cost shall be considered. Whether any improvement qualifies for extension or not, the Concessionaire shall not be relieved from fulfilling its maintenance responsibilities, accomplishing normal repair and replacement as outlined in Paragraph 31, or from complying with the terms and conditions of this Agreement. All construction shall be accomplished in accordance with the Department's standard

Construction Rider at the time improvements are approved by the Department. In no event may this Agreement be renewed or extended as to make this Agreement exceed a total of twenty (20) years from the Commencement Date.

13. **Monthly Payments::**

A. Minimum Guarantee – Concessionaire agrees to pay to the County, monthly, the amount of \$ ____ as the Monthly Minimum Guarantee due to the County on the first of each month.

B. **Percentage Payment** - Concessionaire agrees to pay to the County, monthly, an amount equal to ____ % of monthly gross receipts, hereinafter referred to as "Percentage Payment" due to the County on the 10th day of the month after gross receipts were earned.

14. **Sales Tax:** The Concessionaire shall be liable for the prevailing State of Florida Sales and Use Tax (currently at the rate of 7%) imposed on the amounts payable to the County under this Agreement. This Sales and Use Tax shall be payable to the County, when the Percentage Payment is due, which in turn will remit same, less authorized handling deductions, to the State. Said tax is applicable to the Percentage Payment unless otherwise determined by the State of Florida.

15. **Additional Taxes:** If at any time during the term of this Agreement or any renewal thereof, under the laws of the State of Florida, or any political subdivision thereof, a tax, charge, capital levy, or excise on percentage fees, or other tax (except income tax), however described, against the County on account of the percentage fees payable herein, such tax, charge, capital levy, or excise on rents or other taxes shall be deemed to constitute real estate taxes on the Demised Premises and the premises for the purposes of this Paragraph.

16. **Late Payment Charge:** In the event that the Concessionaire fails to make any payments on time, as required to be paid under the provisions of this Agreement, a penalty at the rate of 1.5% per month or any portion of a month shall accrue from the due date, against the delinquent payment(s) until same are paid. The right of the County to require payment of such late payment charge and the obligation of the Concessionaire to pay same shall be in addition to and not in lieu

of the rights of the County to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by law.

17. **Application of Payments:** Payments are applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied proportionately to the Percentage Payment and the associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.
18. **Worthless Check or Draft:** In the event that the Concessionaire delivers a dishonored check or draft to the County in payment of any obligation arising under this Agreement, the Concessionaire shall incur and pay a service charge of \$10.00 or five percent (5%) of the face amount of the check, whichever is greater. For each such dishonored check, such payment to be made within not more than five (5) days from written notice of such default. Further, in such event, the Department may require that future payments required pursuant to this Agreement be made by cashier's check or other means acceptable to the Department. A second such occurrence of dishonored check during the Agreement term will be a breach of contract and, at the County's option, will constitute a default allowing termination.
19. **Gross Receipts:**
- A. Agreement Year Defined:** "Agreement Year" means a twelve-month period beginning the date of the execution of this Agreement.
- B. Gross Receipts Defined:** "Gross Receipts" means all receipts from the sale of services or merchandise by Concessionaire, concessionaires of Concessionaire and sub-Concessionaire(s) of Concessionaire, sold in, upon or from the Demised Premises, including such sales as shall in good faith be credited by Concessionaire, its concessionaires, and sub-Concessionaires in the regular course of its or their business to personnel employed at the time of sale at the Demised Premises, including sub-lease payments to the Concessionaire and mail and telephone orders received at the Demised Premises and off-premises sales; but shall not be deemed to mean or include the following: amounts credited by Concessionaire or its concessionaires or sub-Concessionaires for returned or defective merchandise; sales, excise and similar taxes; or the

proceeds of sales of Concessionaire's trade fixtures, operating equipment or other property used by Concessionaire or its concessionaires or sub-Concessionaires in the operation of its business and not acquired or held by it for the purpose of sale. Sales shall be deemed to have been made when services or merchandise has been served, shipped or delivered or when charged against the purchaser on the books of Concessionaire, or its concessionaires or sub-Concessionaires, whichever of such events shall first occur.

C. Concessionaire's Certification of Receipts: Concessionaire shall submit to County on or before the 10th day following the end of each month during the term of this Agreement and on or before the 10th day of the month following the expiration or earlier termination of the term, a written statement, signed by Concessionaire and certified by it to be true and correct, showing the amount of Gross Receipts during the preceding month. Concessionaire shall submit to County on or before the 60th day following the end of each of County's Agreement year an Annual Written Statement, signed by Owner, CEO, or Financial officer of the Concessionaire and certified by it to be true and correct, setting forth the amount of Gross Receipts during the preceding Agreement Year, which statement shall also be duly certified by an independent Certified Public Accountant. The statement referred to herein shall be in such form and style and contain such details and breakdowns as County may reasonably determine or require.

D. Examination of Concessionaire's Books and Records: Such books and records as are necessary to determine the amount of any Percentage of Monthly Gross Receipts payable to County shall be subject to examination by County or its authorized representatives at reasonable times during Concessionaire's business hours, at County's expense and in such manner as not to interfere unreasonably with the conduct of Concessionaire's business.

E. Concessionaire's Receipts Records: For the purpose of computing and verifying the Percentage of Monthly Gross Receipts due hereunder, Concessionaire shall prepare and keep, for a period of not less than three (3) years following the end of each Agreement Year, adequate books and records, including but not limited to those relating to inventories, purchases, and receipts of merchandise, and all sales and other pertinent transactions by Concessionaire. Concessionaire shall record at the time of sale each receipt from sales or other transactions,

whether for cash or on credit, in one or more sealed cash register or registers having a cumulative total. Concessionaire shall keep, for at least three (3) years following the end of each Agreement Year, all pertinent original sales records, which records shall include (i) cash register tapes; (ii) serially-numbered sales slips; (iii) mail order; (iv) telephone orders; (v) settlement report sheets of transactions with subtenants, concessionaires, and licensees; (vi) records showing that merchandise returned by customers was purchased by such customers; (vii) receipts or other records of merchandise taken out on approval; (viii) income and sales tax returns; and (ix) such other records which would normally be examined and required to be kept by an independent accountant pursuant to generally accepted auditing standard in performing an audit of Concessionaire's Gross Receipts.

The acceptance by County of payments of Percentage of Monthly Gross Receipts or reports thereon shall be without prejudice and shall in no case constitute a waiver of County's right to examination of Concessionaire's books and records of its Gross Receipts and inventories of merchandise.

F. Audit of Concessionaire's Business Affairs and Records: County shall have the right to cause, upon five (5) days' written notice to Concessionaire, a complete audit to be made by a designated external auditing firm or other certified public accounting firm selected by the Department, or the Internal Auditing Department of the County. Concessionaire shall make all such records available for said examination at the Demised Premises or at some other mutually agreeable location. If the result of such audit shall show that Concessionaire's statement of Gross Receipts for any period has been understated, Concessionaire shall pay County the amount due. If such understatement is three percent (3%) or more, Concessionaire shall pay County the cost of such audit in addition to any deficiency payment required, plus ten percent (10%) of any such deficiency. A report of the findings of said accountants shall be binding and conclusive upon County and Concessionaire. The furnishing by Concessionaire of any grossly inaccurate statement shall constitute a breach of this Agreement. Any information, excluding written documents, obtained by County as a result of such audit shall be held in strict confidence by

County except in any proceeding or action to collect the cost of such audit or deficiency, or except in connection with any mortgage or assignment of this Agreement for financing purposes.

G. Concessionaire Default: If Concessionaire fails to record, maintain, or make available sales supporting documentation as specified above, then Concessionaire shall be deemed to be in default under this Paragraph 19(G).

20. **Utility Services:** The County has caused all necessary utility lines and services to be brought to the Demised Premises. Concessionaire shall not place any unacceptable load or burden on the capacity of the applicable building systems and utility lines of the Park as determined either by the public utility providing such service or by the Department in the exercise of reasonable judgment. Concessionaire shall make all repairs caused by Concessionaire's negligence.
21. **Payment of Utility Services:** Concessionaire agrees to pay for all charges for utility service used or consumed in or upon the Demised Premises including, but not limited to: electricity, gas, water and sewerage charges. To the extent that such charges are separately measured by metering or otherwise, Concessionaire agrees to pay the actual cost thereof, without addition or surcharge by the County. To the extent that such charges are not separately metered, Concessionaire agrees to pay Concessionaire's pro-rata share thereof. In the event Concessionaire uses a disproportionate amount of any utility or service provided under Paragraph 20 and not separately metered, the County shall have the right to engage a registered Professional Engineer to compute Concessionaire's utility usage, and determine an equitable utility charge to Concessionaire based upon such usage. Such calculations of Concessionaire's pro-rata share of services is contained in Exhibit F of this Agreement and will be subject to annual review and adjustment or upon the addition or deletion of equipment utilizing electricity at the Facility. Concessionaire agrees to pay the amount set forth in Exhibit F in 12 equal installments to be remitted with Concessionaire's Percentage Payment as provided in Paragraph 13 herein.
22. **Curtailment or Interruption of Service:** The County reserves the right to interrupt, curtail or suspend the provision of any utility service to which Concessionaire may be entitled hereunder

when necessary by reason of accident or emergency or for repairs, alterations, or improvements in the judgment of County desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the County. The work of such repairs, alterations, or improvements shall be prosecuted with reasonable diligence. The County shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Concessionaire or for any limitation of supply resulting from governmental orders or directives. No diminution or abatement of charges, nor damages, shall be claimed by Concessionaire by reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of Concessionaire's obligations hereunder be affected or reduced thereby.

23. **Accord and Satisfaction:** No payment by Concessionaire or receipt by County of a lesser amount than Percentage Payment herein stipulated shall be deemed to be other than on account of the earliest stipulated Percentage Payment then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of stipulated Percentage Payment be deemed an accord and satisfaction. The County may accept such check or payment without prejudice to County's right to recover the balance of such Percentage of Monthly Gross Receipts or pursue any other remedy provided in this Agreement, at law or in equity.
24. **Payment of Fees:** The monthly Percentage Payment as provided in Paragraph 13 herein shall be paid or mailed to:

Miami-Dade Park and Recreation Department

Contract Management Section

275 N.W. 2nd Street, 3rd Floor

Miami, FL 33128

(Checks shall be made payable to the "Miami-Dade County Board of County Commissioners)

25. **Holding Over:** If Concessionaire remains in possession of the Demised Premises after the expiration of the term of this Agreement, or any option period, without a new Agreement

reduced to writing and duly executed and delivered (even if Concessionaire shall have paid, and County shall have accepted, payment in respect to such holding over), Concessionaire shall be deemed to be occupying the Demised Premises only as a Concessionaire from month-to-month, subject to all covenants, conditions, and agreements of this Agreement. If Concessionaire fails to surrender the Demised Premises upon the termination of this Agreement, then Concessionaire shall, in addition to any liabilities to County accruing there from, indemnify and hold harmless the County and its assigns and agents from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding Concessionaire on such failure. The County retains the right to evict pursuant to Chapters 51 and 83 of the Florida Statutes relating to commercial leases.

26. **County's Work:** County shall have the right, at its sole cost and expense, without limitation, to make any repairs, alterations and additions to any structures and facilities, including the facilities demised under this Agreement, free from any and all liability to the Concessionaire for loss of business or damages of any nature whatsoever during the making of such repairs, alterations and additions.
27. **Concessionaire's Work and Concessionaire's Design Criteria:** All work other than County's Work shall be accomplished by Concessionaire at Concessionaire's sole expense and in accordance with this Agreement and the Construction Rider, attached as Exhibit E and made a part hereto by reference. In no event shall Concessionaire do any work without the express written consent of the County.
28. **Construction Bonds:** Prior to the commencement of any construction of the improvements or any phase thereof, the Concessionaire shall provide to the County with a performance and payment bond or the deposit for the estimated sum required to complete Concessionaire's Work. **Improvements Greater Than \$100,000.** In the event the Concessionaire desires to construct an improvement on the Demised Premises, the Concessionaire shall obtain from its construction contractor separate payment and performance bonds, each equal to the full amount of the construction cost of the improvement, so long as the construction cost of the improvement is

greater than \$100,000. Concessionaire shall obtain and deliver said bonds in favor of Lessor in a form of security which meets the requirements, as applicable, of Section 255.05 of the Florida Statutes, as set forth below, not less than ten (10) days prior to the anticipated commencement of construction. The Department shall have the right of approval of the bond surety, which approval shall not be unreasonably withheld, in accordance with the then applicable Miami-Dade County criteria prior to the execution and delivery of the public construction bond by Concessionaire. In the event that, for any reason, either or both of the Concessionaire's payment and performance bonds lapse or are held to be no longer valid or enforceable before the satisfaction of any and all claims by materialmen, laborers, subcontractors, or any suppliers of any kind, the Concessionaire shall pay all such claims, and indemnify, defend, and hold the County harmless against such claims.

Improvements Less Than \$100,000. As to construction on the Demised Premises, the cost of which is less than \$100,000, the Concessionaire shall acquire separate payment and performance bonds, in accordance with the terms and conditions set forth in the previous paragraph. In lieu of payment and performance bonds, the Concessionaire may deposit in escrow with the County the estimated sum required to complete Concessionaire's work, so long as the construction costs are less than \$100,000. Upon the satisfactory completion of all work and installations and the submission of proof that all bills in connection therewith have been paid, the County shall release such funds from escrow. County, in its sole discretion, may release portions of such escrow deposit to pay bills as the work and the installation progress. In the event that for any reason, either or both of Concessionaire's payment and performance bonds lapse or are held to be no longer valid or enforceable before the satisfaction of any and all claims by materialmen, laborers, subcontractors, or any suppliers of any kind, the Concessionaire shall pay all such claims and indemnify, defend, and hold the County harmless against such claims. In the event that the Concessionaire opts not to provide payment and performance bonds, and the security held in escrow is insufficient to satisfy any claim by materialmen, laborers, subcontractors, or any suppliers of any kind, the Concessionaire shall pay all such claims and indemnify, defend, and

hold the County harmless against such claims.

29. **Ownership of Improvements:** Upon the expiration or earlier termination of this Agreement for any reason, all existing and future installed fixtures, equipment, improvements and appurtenances attached to or built into the Demised Premises in such a manner as to become part of the freehold, whether or not by or at the expense of Concessionaire, shall become and remain a part of and be surrendered with the Demised Premises. Any furniture, furnishing, equipment or other articles of movable personal property owned by Concessionaire and located in the Demised Premises, shall be and shall remain the property of Concessionaire and may be removed by it at any time during the term of this Agreement so long as Concessionaire is not in default of any of its obligations under this Agreement, and the same have not become a part of the freehold, and so long as such does not materially affect Concessionaire's ability to use said premises and conduct its business as provided herein. However, if any of Concessionaire's property is removed and such removal causes damage to the Demised Premises, Concessionaire shall repair or pay the cost of repairing any damage to the Demised Premises resulting from such removal. Any property belonging to Concessionaire and not removed by Concessionaire at the end of the Agreement Term or a renewal, if applicable, shall, at the election of the County, be deemed to be abandoned by Concessionaire, and the County may keep or dispose of such property and restore the premises to good order within ten (10) days after billing therefore. At the expiration of the term of this Agreement, Concessionaire shall deliver to the County the keys and combinations to all safes, cabinets, vaults, doors and other locks left by Concessionaire on the Demised Premises.

30. **Concessionaire's Changes:**

- a. **Conditions for Making Changes:** After Commencement Date, and subject to approval of the Department in writing, which approval maybe withheld by the County with or without cause, Concessionaire may at any time, at its expense, make such other alterations, additions, installations, substitutions, improvements and decorations (hereinafter collectively called "changes" and, as applied to changes provided in this Paragraph, "Concessionaire's Changes"), in and to the Demised Premises, excluding

structural changes, as Concessionaire reasonably may consider necessary for the conduct of its business in the Demised Premises, subject to approval by the Department, and to the following conditions:

- i. The structural integrity of the Facility shall not be affected.
 - ii. No part of the Park not included within the Demised Premises shall be physically affected.
 - iii. The proper functioning of any of the material, electrical, sanitary, fire protection and other service systems shall not be adversely affected.
 - iv. In performing the work involved in making such changes, Concessionaire shall be bound by and observe all of the conditions and covenants contained in this Paragraph.
 - v. At the expiration or any earlier termination of this Agreement, on the County's written request, Concessionaire shall restore the Demised Premises to their condition prior to the making of any change permitted by this Paragraph, reasonable wear and tear excepted, unless waived by the County in writing.
 - vi. Any work done on the Demised Premises shall be consistent with the Metrozoo Master Plan.
- b. **Approvals for Changes, Cost and Insurance:** Concessionaire, at its expense, shall obtain all necessary governmental permits and certificates for the commencement of prosecution of Concessionaire's Changes and for final approval thereof upon completion, and shall cause Concessionaire's Changes to be performed in compliance therewith, and with all applicable laws and requirements of public authorities, and with all applicable requirements of insurance bodies, and in good and workmanlike manner, using materials and equipment at least equal in quality and class to the original installations of the Demised Premises or Park, and so as not to impose any additional expense upon the County. Throughout the performance of Concessionaire's Changes, Concessionaire shall carry, or cause to be carried,

insurance as set forth in Paragraph 55. If any of Concessionaire's Changes shall involve the removal of any fixtures, equipment or property in the Demised Premises which are the County's Property, such fixtures, equipment or other property shall be promptly replaced, at Concessionaire's expense, with fixtures, equipment or other property of like utility and at least equal value unless the County shall otherwise expressly consent in writing. The replacement of these fixtures shall not be considered a permanent improvement for purposes of options to extend under Paragraph 12 of this agreement.

- c. **Violations , Liens or Claims, and Security Interests:** Concessionaire, at its expense, and with diligence and dispatch, shall secure the cancellation or discharge of all notices of violation arising from or otherwise connected with Concessionaire's Changes or operations in the Demised premises which shall be issued by any party having or asserting jurisdiction. Concessionaire shall promptly pay its contractors and materialmen for all work and labor done at Concessionaire's request. Should any such lien or claim be asserted or filed, regardless of the validity of said liens or claims, Concessionaire shall bond against or discharge the same within ten (10) days of the filing of said encumbrance. In the event Concessionaire fails to remove or bond against said lien or claim by paying the full amount claimed, Concessionaire shall pay the County upon demand any amounts paid out by the County, including the County's costs, expenses and Counsel fees. Concessionaire further agrees to hold the County harmless from and to indemnify the County against any and all claims, demands and expenses, including attorney's fees, by reason of any claim of any contractor, subcontractor, materialman, laborer or any other third person with whom Concessionaire has contracted, or otherwise is found liable for, with respect to improvements undertaken by Concessionaire on Demised Premises. Nothing contained in this Agreement shall be deemed, construed or interpreted to imply any consent or agreement on the part of the County to subject the County's interest or

estate to any liability under any mechanic's or other lien or claim asserted by any contractor, subcontractor, materialman or supplier thereof against any part of the Park or any of the buildings or improvements thereon (inclusive of the Demised Premises) and each such contract shall provide that the contractor must insert a statement in any subcontract or purchase order that the contractor's contract so provides for a waiver of lien or claim against the County and that the subcontractor, materialman and supplier agree to be bound by such provision.

- d. **Review of Construction:** During the construction of the improvements, the Department or its designee shall periodically inspect the construction to ensure conformity with the approved improvement documents, and any changes thereto requested by the Concessionaire and approved by the Department.

31. **Concessionaire's Repairs and Maintenance:** The Concessionaire accepts the Facilities in as-is condition. Concessionaire, at its expense, shall make promptly: All repairs, ordinary or extraordinary, interior or exterior, structural or otherwise, in and about the Demised Premises, Common Area, and the Demised Premises or Park as shall be required by reason of (i) the performance by Concessionaire of any work on the Demised Premises; (ii) the installation, use or operation of Concessionaire's property; (iii) Concessionaire's portion of the utility lines in the Demised Premises, if damaged due to Concessionaire's negligence; (iv) the moving of Concessionaire's Property in or out of the Demised Premises or Park; (v) the misuse or neglect of the Demised Premises by Concessionaire or any of its employees, agents, contractors, or customers including the failure or neglect of Concessionaire to make the repairs required by the succeeding subsection hereof.

Such repairs, other than those required to be made by the County under Paragraph 46, as may be necessary to maintain the Demised Premises and Concessionaire's property in as good order, condition, and repair as they are at the Commencement Date. Concessionaire shall, if due to its negligence, be responsible for repairs, maintenance, and replacements including all utility systems, serving same and appurtenances thereto, and shall keep them at all times neat, clean and

in good repair, free from filth, overloading, danger of fire, explosion, or any nuisance, and return the same to the County, after removing all its property therefrom, at the expiration of the Agreement Term, in as good condition as when received by Concessionaire, ordinary wear and use and casualty loss due to causes beyond Concessionaire's control excepted. Concessionaire agrees that it will cause no damage to foundations, roofs, walls, floors, court surfaces, fencing, lighting and if it does, it will be liable to the County for the cost of repairs. If the Demised Premises are not surrendered as aforesaid, in addition to all other rights given to the County herein or by law:

- i. The County may, at its option, restore the Demised Premises or the Park to good order and condition and Concessionaire shall pay to the County within ten (10) days after billing therefore, as additional rent, the expense of such restoration; and
- ii. Concessionaire shall indemnify and hold harmless the County against any and all claims, demands, loss, or damage, including attorney's fees, resulting from the delay by Concessionaire in surrendering the Demised Premises including, but not limited to, claims made by any succeeding Concessionaire or Lessor based on such delay.
- iii. Concessionaire shall pay to County as liquidated damages for any holdover, in addition to amounts paid pursuant to (ii) above, double payments (including Percentage Rent (in an amount at least equal to the average Percentage of Monthly Gross Receipts theretofore paid by Concessionaire)).

Concessionaire's obligation to perform this covenant shall survive the termination of this Agreement.

32. **Facilities:** The Concessionaire hereby agrees to submit for written approval by the Department, detailed plans and specifications for any anticipated facility improvements and shall construct the improvements in accordance with the current Department Construction Rider and made a part hereto by reference. It is expressly understood by the parties that the County may withhold approval of such improvements for any reason, without any liability to Concessionaire or other party.

All equipment and personal property furnished by Concessionaire shall be of good quality and suitable for its purpose. The Department shall have the right to require substitute equipment of personal property when such action is deemed necessary or desirable. Equipment acquired by the Concessionaire by purchase from the Department that is unsuitable for Concessionaire's operation may be replaced with other equipment or personal property of the Concessionaire's choice, subject to the above conditions.

It shall be the responsibility of the Concessionaire to coordinate activities with the Department during any periods of construction and normal operations.

The Concessionaire agrees to maintain said premises in the same condition, order, and repair as at the commencement of operations or after improvements, excepting only reasonable wear and tear arising from the use thereof under this Agreement.

33. **County Approval:** The Concessionaire agrees that it will obtain prior written approval from the Department in all of the following matters:

- A. Products, services or prices
- B. Hours of daily operation
- C. Uniforms to be used by employees
- D. Any alterations, improvements or installations
- E. Equipment
- F. Signage, graphics or advertising
- G. Discounts and coupons
- H. Use of County's or Metrozoo's name

Further it is understood by the Concessionaire that should any of the above items be disapproved, Concessionaire may offer alternative solutions. The County reserves the right with stated just cause to require the Concessionaire to change within a stated time any and all items contained in this Paragraph it deems in need of change, despite previous approval of same.

34. **Personnel:** The Concessionaire shall provide the Department with the name and telephone

number of a management person of the Concessionaire who will be on call, at all times, for emergencies or other matters related to the operations under this Agreement. The Concessionaire shall ensure that all its personnel are courteous and cooperative and present a neat, clean and professional appearance at all times. The Concessionaire shall ensure that all employees having public contact are able to understand and communicate clearly in spoken English. Failure of an employee to perform as required in this paragraph shall be grounds for the County to demand his or her removal from duties in the Demised Premises. Concessionaire's employees will not be considered agents of the County.

35. **On-Site Manager:** Throughout the term of this Agreement or any extensions thereof, the Concessionaire shall employ a qualified full-time on-site manager having experience in the management of this type of operation, who shall be available during normal business hours, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Concessionaire under this Agreement and to accept service of all notices provided for herein.
36. **Monitoring Services:** The Department shall have the right, without limitation, to monitor and test the quality of services of the Concessionaire, including, but not limited to personnel and the effectiveness of its cash-handling procedures, through the use of the shopping service, closed circuit TV, and other reasonable means.
37. **Quality of Concessionaire's Service:** The Concessionaire shall conduct its operations in an orderly manner and so as not to annoy, disturb, or be offensive to customers, patrons, or others in the immediate vicinity of such operations. The Concessionaire shall control the conduct, demeanor and appearance of its officers, members, employees, agents, representatives, and upon objection of the County concerning the conduct, demeanor or appearance of any such person, Concessionaire shall immediately take all necessary steps to correct the cause of such objection. Concessionaire shall take good care of said premises, shall use the same in a careful manner and shall, at its own cost and expense, keep, maintain, and repair (excluding normal wear and tear) and, upon the expiration of this Agreement or its termination in any manner, shall deliver said

premises to the County in the same condition as at the commencement this Agreement, with the exception of loss by fire or other casualty and ordinary wear and tear. Concessionaire shall furnish good, prompt and efficient service, adequate to meet all reasonable demands therefore. The Concessionaire shall not conduct any business or activity not specifically authorized by this Agreement in the Demised Premises, unless approved by the County. It is expressly understood and agreed that the said operation shall not interfere in any manner with the use of the public area or infringe upon the normal method of operations of any other parties authorized to conduct business at or near the location. The Concessionaire agrees that a determination by the County will be accepted as final in evaluating whether its activities infringe on the rights of others and that Concessionaire will fully comply with any decisions on this matter.

38. **Services/Equipment Provided by County:** The County shall provide access to the following:

- A. Electrical as existing.
- B. Water facilities as existing.
- C. Sewage collection facilities as existing.
- D. Waste collection.

39. **Equipment and Services Provided by Concessionaire:** The Concessionaire, at its sole cost, shall provide at the Demised Premises:

- A. Janitorial service within the Demised Premises.

The Concessionaire shall keep the Demised Premises and equipment clean at all times. If the Demised Premises and equipment are not kept clean in the sole opinion of the Department, the Concessionaire will be so advised and if corrective action if not immediately taken, the Department will cause the same to be cleaned and the Concessionaire shall assume responsibility and liability for such cleaning.

- B. Pest extermination service (if additional service, other than what the County may currently be providing, is required).

40. **Equipment Installed by Concessionaire:** Any equipment and furnishings installed by the Concessionaire must be approved by the Department prior to installation, which approval shall

not be unreasonably withheld. The Concessionaire shall not install, remove or replace the equipment or furnishings without notification to, and prior approval by, the County, which approval shall not be unreasonably withheld. Following the installation of any additional equipment, furnishing and improvements which the County may approve from time to time, Concessionaire shall provide to the County a statement setting forth the cost of such equipment, furnishings or improvements and the date upon which the installation of such equipment, furnishings and improvements was completed. Concessionaire agrees that all new equipment, furnishings and improvements provided shall meet the requirements of all applicable building, fire, pollution and other related codes. Concessionaire shall not alter or modify any portion of the Facility, the Demised Premises or the improvements constructed therein without first obtaining written approval from the County.

41. **Maintenance Responsibilities of Concessionaire, Appearance of Facility:** Concessionaire shall, at its sole cost and expense, keep and maintain the Demised Premises in a first class condition during the term of this Agreement and any extension thereof. The provision of janitorial services and all interior maintenance within the Demised Premises are the sole and exclusive responsibility of the Concessionaire. Upon failure of the Concessionaire to maintain the Demised Premises as required in this Paragraph, the Department may, after fifteen days written notice to the Concessionaire, enter upon the Demised Premises and perform all cleaning, maintenance and repairs which may be necessary and the cost thereof, plus 25% for administrative costs, shall be billed to and paid by the Concessionaire.
42. **Damages:** Concessionaire shall repair all damages to the Demised Premises or Park caused by the Concessionaire, its employees, agents, or independent contractors.
43. **Quiet Enjoyment of Demised Property:** The County covenants and agrees that so long as no default exists in the performance of Concessionaire's covenants and agreements contained herein, Concessionaire may peaceably and quietly hold and enjoy the Demised Premises and all parts thereof for that portion of the Agreement Term, free from eviction or disturbance by the County or any person claiming under, by, or through the County.

44. **Damage or Destruction of Premises:** If either the Demised Premises or the Demised buildings are partially damaged, but not rendered unusable for the purposes of this Agreement, the same shall with due diligence be repaired by the Concessionaire from proceeds of the insurance coverage and/or at its own cost and expense. If the damage shall be so extensive as to render such premises unusable for the purposes intended, but capable of being repaired within thirty (30) days, the damage shall be repaired with due diligence by the Concessionaire from the proceeds of the insurance coverage policy and/or at its own cost and expense.

In the event the said premises are completely destroyed or so damaged that it will remain unusable for more than thirty (30) days, the Concessionaire and the County shall be under no obligation to repair and reconstruct the premises. The portion of the Agreement which pertains to such destroyed property shall cease and terminate, and all adjustments which are proper including restoration of the site to a clean, neat and usable condition shall be made accordingly. However, at the option of the County, and through negotiations pertaining to all matters for continuing the premises in an Agreement, the Concessionaire may reconstruct the premises at its own cost.

45. **County's Repair, Facility Repairs, Alterations and Additions by the County:** The County, as its responsibility, and at its expense (except if the damage is caused by Concessionaire), shall make all repairs and replacements, structural and otherwise, necessary, or desirable in order to keep in good order and repair the foundations, roofs and structural soundness of floors and walls of the Demised Premises and the Common Areas of the Park. There shall be no liability on the part of the County by reason of inconvenience, annoyance, or injury to business arising from the County, Concessionaire or others making any repairs, alterations, addition, improvements, restorations, or replacements, in or to any portion of the Demised Premises or Park, or to fixtures, appurtenances, or equipment thereof. The County shall have the absolute right to make reasonable repairs, alterations, and additions to any structures and facilities, including the Demised Premises, free from any and all liability to the Concessionaire for loss of business or

damages of any nature whatsoever during the making of such repairs, alterations, and additions. In making such repairs, alterations, and additions, the County shall take such reasonable measures as are necessary to minimize interference with Concessionaire's operations of the Demised Premises.

46. **Diminution for County's Repair:** Except as elsewhere specifically provided in this Agreement, there shall be no liability on the part of the County by reason of inconvenience, annoyance or interference with Concessionaire's business arising from the County or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Demised Premises, the Park or the building or buildings containing within the Park, or in or to fixtures, appurtenances or equipment thereof, provided such work (except in case of emergency and to the extent practical) does not unreasonably interfere with Concessionaire's use of the Demised Premises.
47. **Performance of Obligations:** Concessionaire covenants at all times during the term of this Agreement to perform promptly all of the obligations of Concessionaire set forth in this Agreement.
48. **Ingress and Egress:** Subject to rules and regulations, statutes and ordinances, and terms of this Agreement governing the use of the Facility, Concessionaire, his agents and servants, patrons and invitees, and his suppliers of service and furnishers of materials shall have right of ingress and egress to and from the premises.
49. **Assignment, Subletting, and Successors in Interest:**
- A. Concessionaire shall not assign, mortgage, pledge nor otherwise encumber this Agreement or any portion thereof, nor any property associated with this Agreement without prior written approval of the County. Unapproved assignment, mortgaging, pledging or encumbering shall be grounds for immediate termination of this Agreement. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on assignees and other successors as may be approved by the County.
- B. Concessionaire shall not sub-lease services required to be provided under this Agreement

without prior written approval of the County. Unapproved sub-letting shall be grounds for immediate termination of this Agreement. It is agreed that all terms and conditions of this Agreement shall extend to and be binding on any sub-Concessionaires, including percentage payments on gross receipts as defined in Paragraph 19B. Concessionaire shall be liable for acts and omissions by any sub-Concessionaire affecting this Agreement. The County reserves the right to directly terminate (and evict or pursue any applicable remedy) any sub-Concessionaire of the Concessionaire for any cause for which Concessionaire may be terminated.

Any sub-Demised services must be made available and accounted for through the Concessionaire so as to provide seamless service to the public as if provided directly by the Concessionaire.

50. **Ownership of Concessionaire:** The ownership of the Concessionaire is very important to the County. Therefore, the County reserves the right to terminate this Agreement at any time if more than 10% of the ownership of the Concessionaire has not been specifically approved by the County. The County shall reject any proposed new owner for any reason it believes is in the best interests of the public. Concessionaire agrees to provide on 24-hour notice to the County an accurate list of all owners of the Concessionaire, showing the percentage of ownership of each owner, and, any change of corporate name or corporate ownership. Concessionaires, for which stock is listed on a major stock exchange, may be wholly or partially exempted from the list requirement of this paragraph at the discretion of the County.

51. **Security Deposit:** Concessionaire shall furnish a Security Deposit in the amount \$150,000 redeemable at the end of the Agreement term except for such conditions pertinent thereto, or in such other media, as further described, acceptable to the County.

The Concessionaire may, in lieu of a Security Deposit with the County, provide a Performance Bond or Irrevocable Letter of Credit in the same amount. This bond or Letter of Credit will be conditioned on the full and faithful performance of all covenants of this Agreement.

In the event that Concessionaire abandons performance or fails to perform as required, the

County will execute on the Bond, draw upon the irrevocable letter of credit or retain the cash deposit, whichever is the case, and Concessionaire will be responsible for the balance of the debt, if any, that is owed. Additionally, if the County must draw upon any portion of the form of security provided, Concessionaire hereby agrees to restore the security to its original amount within seven (7) days of receiving notice by the County that the security was drawn upon.

52. **County's Property Insurance:** Any insurance the County may maintain shall not cover Concessionaire's improvements and betterments, contents, or other property of Concessionaire. Concessionaire shall not violate, or permit the violation of, any condition imposed by any of the County's insurance policies, and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Demised Premises which would increase the fire or other property or casualty insurance rate on the building or buildings in which the Demised Premises is located or the property therein over the rate which would otherwise then be in effect (unless Concessionaire pays the resulting increased amount of premium as provided under the further terms hereof), or which would result in insurance companies of good standing refusing to insure the same or any of such property in amounts and at normal rates reasonably satisfactory to the County. If, by reason of any act or omission on the part of Concessionaire, the rate of property insurance on the Demised Premises or Park or equipment or other property of the County shall be higher than it otherwise would be, Concessionaire shall reimburse the County, on demand, for that part of the premiums for property insurance paid by the County because of such act or omission on the part of Concessionaire, which sum shall be deemed additional rent for purposes of collection only.

53. **Concessionaire's Insurance:** The Concessionaire shall furnish to the Department Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Concessionaire as required by Florida Statute, Chapter 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury,

product liability and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.

3. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the Services in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Concessionaire.

All Insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength:

The Company must be rated no less than "B" as to management, and no less than Class "V" as to strength, by the latest edition of Best's Key Rating Guide, published by A.M. Best Company, Oldwich, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

Or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida," issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

Compliance with the foregoing requirements shall not relieve the Concessionaire of any liability and obligation under this section or under any other section of this Agreement.

Award is contingent upon receipt from the Concessionaire of insurance documents within fifteen (15) calendar days after Board of County Commission approval. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Concessionaire shall be verbally notified of such deficiency and shall have an

additional five (5) days to submit a corrected certificate to the County. If the Concessionaire fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after Board of County Commission approval, the Concessionaire shall be in Default of the contractual terms and condition and award of the contract will be rescinded, unless such time frame for submission has been extended by the County.

The Concessionaire shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period; including any and all option years that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Concessionaire shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the contract until such time as the new or renewed certificates are received by the County in the manner prescribed in this Agreement; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

The Department reserves the right to reasonable amend the insurance requirements by the issuance of a notice in writing to the Concessionaire. Modification or waiver of any of the aforementioned requirements is subject to approval of the County's Risk Management Division.

54. **Concessionaire's Insurance During Construction and Indemnification:** Upon Concessionaire occupying the Demised Premises, throughout the construction of Concessionaire's Work, and throughout the construction of Concessionaire's Changes, Concessionaire shall maintain and furnish to Miami-Dade County, c/o General Services Administration, Risk Management Division, 111 N.W. 1st Street, 23rd Floor, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance Pursuant to Florida Statutes, Chapter 440.
- B. Comprehensive General Liability Insurance including contractual liability, products and

completed operations, personal injury, Broad Form Property Damage in the amount not less than Two Million Dollars (\$2,000,000.00) per occurrence combined single limit for bodily injury and property damage. Miami-Dade County shall be shown as additional insured with respect to this coverage.

- C. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the work, in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Concessionaire. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida and satisfactory to the County, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent subject to the approval by the County Risk Management Division.

Or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida, Department of Insurance, and be a member of the Florida Guaranty Fund.

Concessionaire shall furnish the County with reasonably satisfactory evidence that such insurance is in force and effect at or before the Commencement of Concessionaire's Changes, and, on request, at reasonable intervals thereafter during the continuance of Concessionaire's Changes. Concessionaire agrees to indemnify and save harmless Miami-Dade County of and from any and all claims, actions, demands, suits or judgments arising out of the construction operations by or on behalf of Concessionaire. If Concessionaire does not provide any work or

material in connection with construction of Concessionaire's work or material in connection with construction of Concessionaire's Work or Concessionaire's Changes, but all such work and material is provided by a contractor or subcontractor, who carrier the insurance required by this Paragraph, the County may notify Concessionaire in writing that Concessionaire is excused from carrying all or any portion of the insurance coverages described herein, if the County determines in its sole discretion that the contractor's or subcontractor's insurance is sufficient

55. **Release and Indemnification:** Concessionaire will be responsible for and will and does hereby release and relieve the County and hold and defend it harmless from and against any and all liabilities, obligations, damages, penalties, claims, cost, charges, and expenses which may be imposed upon or incurred by the County by reason of loss of life, personal injury, and/or damages to property occurring in any part of the Demised Premises or Park, or business losses, occasioned in whole or in part by the negligence of Concessionaire, its agents or employees. Concessionaire shall defend, indemnify, and save harmless Miami-Dade County and its agents and employees against and from all liabilities, obligations, damages, penalties, claims, costs, expenses, and attorney's fees and costs of defense, which the County or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Contract by the Concessionaire or its employees, agents, servants, partners, principals, or subcontractors. The Concessionaire shall pay all claims, suits, or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Concessionaire expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Concessionaire shall in no way limit the responsibility to indemnify, keep, and save harmless and defend the County or its officers, employees, agents, and instrumentalities as herein provided. The County shall not be liable for any damages or injury which may be sustained by any party or person on the Demised Premises, other than the damage or injury caused solely by the negligence of the County subject to all limitations of Florida Statutes Section 768.28.

56. **Taxes on Concessionaire's Personal Property:** Concessionaire shall be responsible for and shall pay before delinquency all municipal, county, or state taxes assessed against any occupancy interest or personal property of any kind, owned by or placed in, upon or about the Demised Premises by Concessionaire.

57. **Termination by County:** The occurrence of any of the following shall cause this Agreement to be terminated by the County upon the terms and conditions also set forth below:

A. Automatic Termination:

- i. Institution of proceedings in voluntary bankruptcy or reorganization by the Concessionaire.
- ii. Institution of proceedings in involuntary bankruptcy against the Concessionaire if such proceedings continue for a period of ninety (90) days.
- iii. Assignment by Concessionaire for the benefit of creditors.
- iv. Abandonment or discontinuation of operations for more than a 24-hour period without prior written approval from the County.
- v. The discovery of any misstatement in the Concessionaire's Proposal leading to award of this Agreement, which in the determination of the County significantly affects the Concessionaire's qualifications to perform under the Agreement
- vi. Unapproved change of ownership interest in Concessionaire and/or failure to submit the ownership list within 24 hours upon the request of the County.
- vii. Failure to cease any activity which may cause limitation of County's use of the Park.

B. Termination after seven (7) calendar days written notice by the County either by posting on or at the Demised Premises and by certified or registered mail to any known address of Concessionaire set forth in Paragraph 74 hereof for doing any of the following:

- i. Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Concessionaire makes the required payment(s) during the seven (7) calendar day period following mailing of the written notice. Additionally, the County may sue for

Guaranteed Minimum Rent and additional rent and Percentage of Monthly Gross Receipts for the unexpired term of this Agreement.

- ii. Notice of any condition posing a threat to health or safety of the public or patrons and not remedied within the seven (7) calendar day period from receipt of written notice.

C. Termination after fourteen (14) days from receipt by Concessionaire of written notice having either been posted on or at the Demised Premises or by certified or registered mail to the address of the Concessionaire set forth in Paragraph 74 hereof:

- i. Non-performance of any term of this Agreement, including any terms set forth in the Attachments, other than non-payment of rent or performance fees and others listed in A and B above, and failure of the Concessionaire to remedy such breach within the fourteen (14) calendar day period from receipt of the written notice.
- ii. A final determination in a court of law in favor of the County in litigation instituted by the Concessionaire against the County or brought by the County against Concessionaire.

Revenue Control and Audit Defaults: The inability or failure of the Concessionaire to provide the County with an unqualified certified statement of Gross Sales pursuant to Paragraph 19, or to strictly adhere to the revenue control procedures established pursuant to Paragraph 19 (E) shall constitute a noncurable default and in such event the County shall have the right to terminate this Agreement upon seven (7) calendar days written notice to the Concessionaire. In addition to termination for such default, the County shall be entitled to collect damages in the full amount of the payments of the security deposit required pursuant to Paragraph 52 hereof.

59. Habitual Default: Notwithstanding the foregoing, in the event that the Concessionaire has repetitively defaulted (4) four times within a 12 month period, in the performance of or breached any of the terms, covenants and conditions required herein to be kept and performed by the Concessionaire, regardless of whether the Concessionaire has cured each individual condition of breach or default as provided in Paragraphs 58 (B) and (C) herein above, the Concessionaire may be determined by the Director of

the Department to be an "habitual violator". At the time that such determination is made, the Department shall issue to the Concessionaire a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Concessionaire that there shall be no further notice or grace periods to correct any subsequent breaches or defaults and that any subsequent breach(es) or default(s), of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of noncurable default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, County may cancel this Agreement upon the giving of written notice of termination to the Concessionaire, such cancellation to be effective upon the tenth (10) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and the Concessionaire shall have no further rights hereunder. Immediately upon receipt of said notice of termination, the Concessionaire shall discontinue its operations at the Park, and proceed to remove all its personal property in accordance with Paragraphs 70 and 71 hereof.

60. Termination by Concessionaire: Concessionaire shall have the right upon thirty (30) calendar days from receipt of written notice to the County by certified or registered mail to the address set forth in Paragraph 74 hereof to terminate this Agreement at any time after the occurrence of one or more of the following events:

- A. A breach by the County of any of the terms, covenants or conditions contained in this Agreement and the failure of the County to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail, return receipt requested, from the Concessionaire, of the existence of such breach.
- B. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control, or use of the Park, or any substantial part, or parts, thereof in such a manner as substantially to restrict Concessionaire's operations for a period of ninety (90) calendar days or more.

61. Limiting Legislative or Judicial Action: In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way

restricting or prohibiting the use of the Park for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. In the event that any court or legislative body of competent jurisdiction issues an injunction substantially restricting or prohibiting the use of the Park for the purpose of the Agreement, which injunction stays in force for more than thirty (30) calendar days, this Agreement will be null and void, and unenforceable by any party to this agreement and the County shall have no further liability under this Agreement. In the event that a referendum vote of the electorate of Miami-Dade County in any way restricts or prohibits the use of the Park for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. If the County deems the Agreement null and void by function of this Paragraph, the County will not be liable to the Concessionaire for damages arising there from and the County shall have no further liability under this Agreement.

62. **Non-Discrimination:** Concessionaire does hereby for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, covenant and agree that:

- i. No person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said Demised Premises, except for bonafide causes allowed by law.
- ii. That in the construction of any improvements on, over, or under such land and the furnishings of services thereon, no person on the ground of race, color, religion, national origin, sex, sexual orientation, age, residency within or outside Miami-Dade County, or handicap shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, except for bonafide causes allowed by law.
- iii. That the Concessionaire shall use the premises in compliance with all other

requirements imposed by or pursuant to Title 45, Code of Federal Regulations, Article 80, Non-discrimination under programs receiving Federal Assistance through the County of Health, Education and Welfare - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the Agreement and re-enter and repossess said Demised Premises thereon and hold the same as if said Agreement had never been made or issued. This provision shall not be effective, where applicable, until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appellate rights.

Concessionaire shall not discriminate against any employee or applicant for employment in the performance of the contract with respect to hiring, tenure, terms, conditions, or privileges of employment because of age, sex or physical handicap (except where based on a bona fide occupational qualification); or because of marital status, color, religion, national origin, or ancestry.

63. **No Waiver of Right to Enforce:** The waiver by County of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of the Percentage of Monthly Gross Receipts hereunder by County shall not be deemed to be a waiver of any preceding breach by Concessionaire of any term, covenant, or condition of this Agreement, other than the failure of Concessionaire to pay the particular Percentage of Monthly Gross Receipts so accepted, regardless of County's knowledge of such preceding breach at the time of acceptance of such Percentage of Monthly Gross Receipts. No covenant, term, or condition of this Agreement shall be deemed to have been waived by County, unless such waiver be in writing by County, nor shall there be any accord and satisfaction unless expressed in writing and signed by both County and Concessionaire.

64. **Rules and Regulations:** The Concessionaire will observe, obey, and comply with all rules and

regulations adopted by the County and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Concessionaire's operations under this Agreement. Failure to do so will constitute a breach of the Agreement.

65. **Required Permits and Licensing:** The Concessionaire shall procure, at the sole cost of the Concessionaire, all permits, licenses, and approvals required of Concessionaire for this operation and performance under this Agreement.
66. **Hurricane Preparedness:** The Concessionaire shall follow the County's emergency evacuation and hurricane plan as set forth for the Demised Premises or Park.
67. **Inspection by County:** The County shall have the authority to make periodic reasonable inspections of all the Demised Premises, equipment, and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. The Concessionaire shall be required to make any improvements in cleaning or maintenance methods reasonably required by the County. Such periodic inspections may also be made at the County's discretion to determine whether the Concessionaire is operating in compliance with the terms and provisions of this Agreement.
68. **Right of Entry:** The County shall have the right to enter upon the Demised Premises at all reasonable times, whether or not during normal business hours, to examine same and to make such repairs, alterations, replacements, or improvements in the Demised Premises as the County deems necessary, but the County assumes no obligation to make repairs in the Demised Premises other than those expressly provided for in this Agreement. The County agrees, however, that any such repairs, alterations, replacements, or improvements shall be made with minimum amount of inconvenience to Concessionaire and that the County will diligently proceed therewith to completion. The County or the County's agents shall also have the right to enter upon the Demised Premises at reasonable times to show them to actual or prospective mortgagees, tenants, or Concessionaires of the Park. During the one hundred and eighty (180) days prior to the expiration of the term of this Agreement, the County may show the Demised Premises to

prospective tenants. If, during the last ninety (90) days of the term of this Agreement, Concessionaire shall have removed all or substantially all of Concessionaire's property therefrom, the County may immediately enter, alter, renovate, and redecorate the Demised Premises without elimination or abatement of rent or other compensation and such action shall have no effect upon this Agreement.

69. **Signs:** The nature, size, shape and installation of Concessionaire's business signs within the Demised Premises or in, on, or adjacent to the Demised Premises or Park must first be approved in writing by the County. All signs shall be removed by the Concessionaire at termination of this Agreement and any damage or unsightly condition caused to premises because of or due to said signs shall be satisfactorily corrected or repaired by the Concessionaire.
70. **Concessionaire's Occupancy Certification:** Concessionaire agrees at any time and from time to time, within five (5) days after the County's written request, to execute, acknowledge, and deliver to the County a written instrument certifying the Commencement Date that Concessionaire has accepted possession of the Demised Premises and is open for business, that this Agreement is unmodified and in full force and effect (or if there have been modifications, that it is in full force and effect as modified and stating the modifications), the dates to which Percentage of Monthly Gross Receipts, and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge of the signer of such certificate, the County is in default in the performance of any such certificate, the County is in default in the performance of any covenant, agreement, or condition contained in this Agreement, and, if so, specifying each such default of which the signer may have acknowledged.
71. **Surrender of Premises:** At the expiration or earlier termination of the term of this Agreement, Concessionaire shall peaceably surrender the Demised Premises in as good a condition as the Demised Premises were on the Commencement Date of this Agreement, ordinary wear and tear and damage by condemnation, fire or other casualty excepted. Concessionaire shall deliver all keys for the Demised Premises to the County at the place then fixed for the Monthly Percentage Payment, and shall notify the County in writing of all combinations of locks, safes and vaults, if

any, in the Demised Premises. Ordinary wear and tear shall be deemed not to include damage or injury caused by moving Concessionaire's property or trade fixtures into or out of the Demised Premises. Concessionaire's obligation to observe and perform the covenants set forth in this paragraph shall survive the expiration or earlier termination of the term of this Agreement.

72. **Termination of Contract:** Following the termination of this Agreement the Concessionaire, within fifteen (15) calendar days, or earlier if determined by the County, shall forthwith remove all of its personal property not acquired under the terms of this Agreement. Any personal property of Concessionaire not removed in accordance with this paragraph may be removed by the County for storage at the cost of the Concessionaire or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interests of the County. The County shall not be liable to Concessionaire for the safekeeping of Concessionaire's personal property during or after termination of this Agreement. The County shall have the senior interest in the Concessionaire's personal property. Concessionaire shall not remove any equipment, supplies in bulk, or fixtures within the Demised Premises at any time without pre-approval in writing from the County. Concessionaire shall be liable to the County for the fair market value of any equipment, supplies in bulk, or fixtures removed without County pre-approved written permission. Concessionaire shall also be liable for any expenses incurred by the County in prosecuting any action against Concessionaire following unapproved item removal described above. Concessionaire shall also be liable to the County for any expenses incurred by the County in replacing any items wrongfully removed by Concessionaire. It is the intention of the parties to this Agreement that all furnishings and equipment purchased or Demised by the Concessionaire, except those permanently affixed to buildings, as defined under the laws of the State of Florida, shall be the personal property of the Concessionaire. Upon the termination of this Agreement and the removal of all personal property by Concessionaire, the Concessionaire shall deliver said premises to the County in the condition set forth in this Paragraph.

73. **Eviction:** In the event the Agreement is terminated the County reserves the right to utilize the

eviction procedures as detailed in Florida Statutes Chapters 51 and 83.

74. **Approvals:** Except as provided otherwise, whenever prior approvals are required hereinabove by either party, such approvals shall not be unreasonably withheld.
75. **Notices:** Any notices submitted or required by this Agreement shall be sent by registered or certified mail addressed to the parties as follows:

To the County: Park and Recreation Director
Miami-Dade Park and Recreation Department
275 NW 2nd Street, 5th Floor
Miami, Florida 33128

To the Concessionaire:

or to such other address as either party may designate in writing, and where receipt of same is acknowledged by the receiving party. The County may alternatively provide notice by posting written notice on or at the Demised Premises. If attempted delivery of such notice by mail is thwarted by any avoidance of receipt or unavailability for receipt by the intended recipient, that notice will have the effect of being constructively received by the recipient.

76. **Rights to be Exercised by Department:** Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.
77. **Interpretations:** This Agreement and the exhibits and attachments hereto, and other documents and agreements specifically referred to herein, constitute the entire, fully integrated Agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous verbal or written agreements between the parties with respect thereto, excepting any past or contemporaneous written or verbal agreements expressly and clearly incorporated by reference within the four corners of this Agreement. This Agreement may be amended only by written document, properly authorized, executed, and delivered by both parties hereto. For the County, appropriate authorization shall be construed to mean appropriate formal action by the Board of County Commissioners, except where specified within this Agreement that the County Manager or the Manager's designee shall have approval authority. This

Agreement shall be interpreted as a whole unit and paragraph headings are for convenience only. The Agreement shall not be construed in favor of one party or the other. All matters involving the Agreement shall be governed by laws of the State of Florida and the proper venue for any litigation will be a state or federal court located in Florida.

78. **Security and Protection:** The Concessionaire acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property and money used in connection therewith. The County makes no warranties as to any obligation to provide security for the Demised Premises or Park, outside of standard security measures supplied by the County in general. Concessionaire may provide its own specialized security for the Demised Premises, subject to the County's written approval. Absence of said Concessionaire security measures shall not increase the County's security obligation.
79. **Rights Reserved to County:** All rights not specifically granted to the Concessionaire by this Agreement are reserved to the County. The designation of any particular remedy for the County is without prejudice to any other relief available in law or equity, and all such relief is reserved to the County.
80. **Lien:** The County shall have lien upon all personal property of the Concessionaire on the Demised Premises to secure the payment to the County of any unpaid money accruing to the County under the terms of this Agreement.
81. **Entirety of Agreement:** The parties hereto agree that this Agreement sets forth the entire agreement between the parties, and there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except as may be specifically authorized herein or by written instrument executed by the parties hereto.
82. **Headings:** The headings of the various Paragraphs and Sections of this Agreement, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

83. **Waiver:** Invalidation of any portion of this Agreement shall not automatically invalidate the entire Agreement.
84. **Performance:** The parties expressly agree that time is of the essence in the performance of this Agreement and that the failure by the Concessionaire to complete performance within the time specified, or within a reasonable time, if no time is specified herein, shall relieve the County of any obligation to accept such performance.
85. **No Partnership or Agency:** The County and the Concessionaire are independent entities and the officers, employees, and agents of one are not, and shall not represent themselves to be, officers, employees, or agents of the other. This Agreement does not constitute and shall not be represented to constitute a partnership between the County and the Concessionaire.
86. **Choice of Venue:** Any litigation between the County and the Concessionaire relating in any way to this Agreement shall be brought and presented exclusively in a Court located in Miami-Dade County, Florida.
87. **Changes In Contracts That Are About to Expire**
The County Manager is granted authority to negotiate changes in contracts, permits and concessions that are about to expire to assure that the County does not lose revenue opportunities due to delays in obtaining a successor contract, permit or concession. Where Commission approval or action is required in order to effectuate such changes, the Manager shall submit same to the Commission at the next available Commission meeting.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first herein above set forth.

Contractor

Miami-Dade County

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest: _____

Corporate Secretary

Approved by County Attorney as to
Legal sufficiency _____
